

By Mike

S B. No. 780

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of lay midwives; providing criminal and civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 7(a), Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The department shall hire an executive secretary after consultation with the lay midwifery board to perform administrative duties, including keeping the minutes of lay midwifery board meetings, maintaining records about approved training courses, and maintaining records of persons who are registered under ~~[have received-a-letter-of-completion-as-described-in]~~ this Act.

SECTION 2. Section 10, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) To be approved by the Texas Board of Health, a lay midwifery training course must include training in:

(1) the use and administration of prophylaxis to prevent ophthalmia neonatorum;

(2) cardiopulmonary resuscitation of the type recommended by the American Heart Association for certification by that association in basic life support cardiopulmonary resuscitation for

1 adults and infants, or any other type considered appropriate by the
2 board; and

3 (3) techniques for newborn screening tests for inheritable
4 diseases, including tests for phenylketonuria, hypothyroidism, and
5 any similar test required by the board.

6 SECTION 3. Section 13, Chapter 365, Acts of the 68th
7 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
8 Civil Statutes), is amended to read as follows:

9 Sec. 13. REGISTRATION ~~[IDENTIFICATION]~~ REQUIREMENT. (a) A
10 ~~[In-December--of--each--year,--a]~~ person may not practice ~~[who~~
11 ~~practices]~~ lay midwifery in this state unless the person is
12 registered with the department. An applicant for registration must
13 apply to the department on a form prescribed by the department.
14 The application form must be accompanied by a nonrefundable
15 application fee set by the department in an amount not to exceed
16 \$25. The application form must include: ~~[shall-identify-himself~~
17 ~~as-a-lay-midwife-by-appearing-in-person-before-the-county-clerk--of~~
18 ~~the--county--in-which-the-person-resides-or-before-the-county-clerk~~
19 ~~of-each-county-in-which-the--person--practices--lay--midwifery--and~~
20 ~~delivering--to-the-county-clerk-a-verified-identification-form-that~~
21 ~~contains:]~~

22 (1) the person's name, residence, and post office address;

23 (2) the person's date and place of birth;

24 (3) the location of the person's practice according to
25 counties; and

26 (4) other information the department determines necessary
27 ~~[for-the-identification-of-lay-midwives]~~.

1 (b) The applicant must also file with the application
2 documentation in the form required by the rules of the department
3 showing that the applicant has completed an approved lay midwifery
4 training course and passed the final examination for that course.
5 ~~[The-identification-form-shall-be-prescribed-by-the-department.]~~

6 (c) At the time of registration, the department ~~[The-county~~
7 ~~clerk]~~ shall provide each lay midwife ~~[who--identifies--himself]~~ a
8 written notice stating ~~[of]~~ a lay midwife's legal responsibilities
9 under the laws and rules of this state on a form prescribed by the
10 department. Failure to receive the notice does not constitute a
11 defense to prosecution for acts committed in violation of the laws
12 and rules of this state.

13 (d) The department shall provide each county clerk and each
14 local registrar of births within each county with the name of each
15 registered lay midwife who practices in that county. ~~[county-clerk~~
16 ~~shall--retain--for--the--county--clerk's--records--a--copy--of--each~~
17 ~~identification-form--The-county--clerk--shall--send--the--original~~
18 ~~identification-form-to-the-department--The-county-clerk-may-charge~~
19 ~~a--reasonable--fee--for--these-services-under-Article-3930,-Revised~~
20 ~~Statutes.]~~

21 (e) The department shall issue a certificate of registration
22 to a lay midwife who meets the training and examination
23 requirements of this section and pays the registration fee set by
24 the department in an amount not to exceed \$25. A certificate of
25 registration is issued for the calendar year expiring on December
26 31. The department by rule may prorate the registration fee so
27 that an initial registrant pays only that portion of the fee

1 allocable to the number of whole or partial months remaining in the
2 year after the month the certificate is issued.

3 (f) The department shall adopt rules relating to the renewal
4 of a certificate of registration.

5 SECTION 4. Section 14, Chapter 365, Acts of the 68th
6 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
7 Civil Statutes), is amended to read as follows:

8 Sec. 14. ADDITIONAL INFORMATION. (a) The department may
9 require information in addition to that required by Subsection (a)
10 of Section 13 of this Act if it determines the additional
11 information is necessary and appropriate to ascertain the nature
12 and extent of lay midwifery in this state. The department may not
13 require information regarding any act that is prohibited under this
14 Act.

15 (b) Information received under this section may not be made
16 public so as to disclose the identity of any person to whom the
17 information relates. This information is not a public record as
18 defined in Chapter 424, Acts of the 63rd Legislature, Regular
19 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

20 (c) The department shall prescribe forms for the additional
21 information and shall distribute those forms to registered lay
22 midwives. Each lay midwife must complete and return the forms to
23 the department. Failure by a lay midwife to complete and return
24 the forms as prescribed by this subsection constitutes a ground for
25 the revocation of that person's certificate of registration [the
26 county-clerks-of-this-state].

27 [~~(d)--When-a-person-identifies-himself-as-a-lay-midwife-under~~

1 Section 13 of this Act, the county clerk shall give a copy of any
2 form for additional information to the person. The person shall
3 complete the form and return it with the identification form to the
4 county clerk.

5 [(e) The county clerk shall send these forms to the
6 department.]

7 SECTION 5. Chapter 365, Acts of the 68th Legislature,
8 Regular Session, 1983 (Article 4512i, Vernon's Texas Civil
9 Statutes), is amended by adding Section 14A to read as follows:

10 Sec. 14A. SUSPENSION, REVOCATION, OR DENIAL OF CERTIFICATE.

11 (a) After a hearing, the department may suspend or revoke a
12 certificate of registration, or may deny the renewal of a
13 certificate of registration of a lay midwife who practices in
14 violation of this Act. The department by rule shall establish
15 specific grounds for the suspension, revocation, or denial of a
16 certificate.

17 (b) A hearing on the suspension, revocation, or denial of a
18 certificate of registration is subject to the Administrative
19 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
20 Civil Statutes).

21 SECTION 6. Section 15, Chapter 365, Acts of the 68th
22 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
23 Civil Statutes), is amended to read as follows:

24 Sec. 15. ROSTER. (a) The department shall maintain a
25 roster of all persons registered [identified] to practice lay
26 midwifery.

27 (b) The roster shall contain for each person the information

1 required on the registration application [~~identification~~] form
2 under Section 13(a) of this Act and other information that the
3 department determines necessary to identify with accuracy each lay
4 midwife who is registered [~~identified~~] under this Act. This
5 information shall be a public record as defined in Chapter 424,
6 Acts of the 63rd Legislature, Regular Session, 1973 (Article
7 6252-17a, Vernon's Texas Civil Statutes).

8 SECTION 7. Section 16, Chapter 365, Acts of the 68th
9 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
10 Civil Statutes), is amended by amending Subsection (b) and by
11 adding Subsection (h) to read as follows:

12 (b) The department with the advice of the lay midwifery
13 board shall prescribe the form of the written disclosure required
14 by this section, which shall include the information that a lay
15 midwife:

16 (1) may assist only in normal childbirth;

17 (2) has or does not have an arrangement with a local
18 physician for referring patients who have complications that occur
19 before or during childbirth; and

20 (3) may not:

21 (A) administer a prescription drug without a physician's
22 supervision, except for prophylaxis approved by the Texas Board of
23 Health to prevent ophthalmia neonatorum;

24 (B) perform a Caesarean section;[7] or

25 (C) perform an episiotomy[7--and

26 [~~(4)--has-or-has-not-passed-the-lay-midwife--training--course~~
27 ~~final-examination-approved-by-the-board~~].

1 (h) The disclosure form must include a statement explaining
2 that state law requires every newborn child to be tested for
3 certain inheritable diseases. The lay midwife shall disclose to a
4 client that the lay midwife is approved to perform these tests.

5 SECTION 8. Section 17, Chapter 365, Acts of the 68th
6 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
7 Civil Statutes), is amended to read as follows:

8 Sec. 17. PROHIBITED ACTS. Except as provided by Section 21
9 of this Act, a [A] lay midwife may not:

10 (1) administer a prescription drug to a client except under
11 the supervision of a licensed physician in accordance with the laws
12 of this state;

13 (2) use forceps or surgical instruments for any procedure
14 other than cutting the umbilical cord or providing emergency first
15 aid during delivery;

16 (3) remove placenta by invasive techniques;

17 (4) advance or retard labor or delivery by using medicines
18 or mechanical devices; or

19 (5) [~~use--in--connection-with-his-name-a-title,-abbreviation~~
20 ~~or-any-designation-tending-to-imply-that-he-is--a--"registered"--or~~
21 ~~"certified"--lay--midwife--as--opposed--to--one--who--has-identified~~
22 ~~himself-in-compliance-with-this-Act;-or~~

23 [~~(6)~~] assist at childbirth other than a normal childbirth
24 except in an emergency situation that poses an immediate threat to
25 the life of the mother or newborn.

26 SECTION 9. Section 18, Chapter 365, Acts of the 68th
27 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas

1 Civil Statutes), is amended to read as follows:

2 Sec. 18. PENALTIES. (a) A person [~~lay-midwife~~] commits an
3 offense if the person [~~lay-midwife~~] knowingly or intentionally acts
4 as a lay midwife without being registered under [~~commits-an-act~~
5 ~~prohibited-by~~] this Act.

6 (b) An offense under Subsection (a) of this section is a
7 Class C misdemeanor.

8 (c) A lay midwife who knowingly or intentionally fails to
9 comply with the disclosure requirement of this Act commits a Class
10 C misdemeanor.

11 [~~(d)--A--lay--midwife--who--knowingly--or--intentionally--fails--to~~
12 ~~comply-with-the-identification-requirement-of-this--Act--commits--a~~
13 ~~Class-C-misdemeanor.~~]

14 SECTION 10. Chapter 365, Acts of the 68th Legislature,
15 Regular Session, 1983 (Article 4512i, Vernon's Texas Civil
16 Statutes), is amended by adding Sections 21, 22, and 23 to read as
17 follows:

18 Sec. 21. PROPHYLACTIC TREATMENT OF NEWBORNS; NEWBORN
19 SCREENING. (a) Each lay midwife shall administer prophylaxis
20 approved by the Texas Board of Health to prevent ophthalmia
21 neonatorum to each infant the lay midwife delivers.

22 (b) Subject to the availability of funds, the department
23 shall furnish prophylaxis approved by the Texas Board of Health to
24 prevent ophthalmia neonatorum to each lay midwife registered under
25 this Act.

26 (c) The distribution or delivery to a lay midwife by any
27 agent or employee of the department of prophylaxis approved by the

1 Texas Board of Health to prevent ophthalmia neonatorum and the
2 possession of that prophylaxis by a lay midwife is not subject to
3 and does not constitute a violation of Chapter 425, Acts of the
4 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's
5 Texas Civil Statutes).

6 (d) Each lay midwife shall perform the newborn screening
7 tests required under Chapter 262, Acts of the 59th Legislature,
8 Regular Session, 1965 (Article 4447e, Vernon's Texas Civil
9 Statutes), and Chapter 339, Acts of the 65th Legislature, Regular
10 Session, 1977 (Article 4447e-1, Vernon's Texas Civil Statutes), and
11 rules adopted by the Texas Board of Health under those Acts.

12 (e) The administration by a lay midwife of prophylaxis to
13 prevent ophthalmia neonatorum and the performance by a lay midwife
14 of a newborn screening test do not constitute practicing medicine
15 as defined by the Medical Practice Act (Article 4495b, Vernon's
16 Texas Civil Statutes).

17 Sec. 22. ENFORCEMENT; CIVIL PENALTY. (a) The attorney
18 general or a district or county attorney may institute a civil
19 action to compel compliance with this Act.

20 (b) In addition to any injunctive relief or any other remedy
21 provided by law, if a person violates this Act or a rule adopted
22 under this Act, the department may assess a civil penalty against
23 that person as provided by this section.

24 (c) The department may assess the civil penalty in an amount
25 not to exceed \$500. In determining the amount of the penalty, the
26 department shall consider the seriousness of the violation.

27 (d) If, after examination of a possible violation and the

1 facts relating to that possible violation, the department concludes
2 that a violation has occurred, the department shall issue a
3 preliminary report that states the facts on which the conclusion is
4 based, the fact that a civil penalty is to be imposed, and the
5 amount to be assessed. Not later than the 10th day after the date
6 on which the department issues the preliminary report, the
7 department shall send a copy of the report to the person charged
8 with the violation, together with a statement of the right of the
9 person to a hearing relating to the alleged violation and the
10 amount of the penalty.

11 (e) Not later than the 20th day after the date on which the
12 report is sent, the person charged must either make a written
13 request for a hearing or remit the amount of the civil penalty to
14 the department. Failure either to request a hearing or to remit
15 the amount of the civil penalty within the time provided by this
16 subsection results in a waiver of a right to a hearing under this
17 Act. If the person charged requests a hearing, the hearing shall
18 be conducted in the manner provided by Section 14A of this Act. If
19 it is determined after hearing that the person has committed the
20 alleged violation, the department shall give written notice to the
21 person of the findings established by the hearing and the amount of
22 the penalty, and shall enter an order requiring the person to pay
23 the penalty.

24 (f) Not later than the 30th day after the date on which the
25 notice is received, the person charged must pay the civil penalty
26 in full, or, if the person wishes to contest either the amount of
27 the penalty or the fact of the violation, remit the assessed amount

1 to the department for deposit in an escrow account. If, after
2 judicial review, it is determined that no violation occurred or
3 that the amount of the penalty should be reduced, the department
4 shall remit the appropriate amount to the person charged with the
5 violation not later than the 30th day after the date on which the
6 judicial determination becomes final.

7 (g) Failure to remit the amount of the civil penalty to the
8 department within the time provided by Subsection (f) of this
9 section results in a waiver of all legal rights to contest the
10 violation or the amount of the penalty.

11 (h) A civil penalty owed under this section may be recovered
12 in a civil action brought by the attorney general at the request of
13 the department.

14 Sec. 23. PROVISION OF SUPPORT SERVICES. (a) The department
15 and a local health department, a public health district, or a local
16 health unit that is owned, operated, or leased by a political
17 subdivision of this state shall provide medical and laboratory
18 support services to pregnant women and newborns who are clients of
19 lay midwives for the performance of the prenatal standard
20 serological test for syphilis and the newborn screening tests
21 required by law for phenylketonuria, hypothyroidism, and other
22 inheritable diseases, if those services are available to other
23 clients or patients of that entity. The entity may charge a
24 reasonable fee for the services, but a person may not be denied
25 services because of inability to pay.

26 (b) For the purposes of this section, "local health
27 department," "public health district," and "local health unit" have

1 the meanings assigned by the Local Public Health Reorganization Act
2 (Article 4436b, Vernon's Texas Civil Statutes).

3 SECTION 11. Section 12, Chapter 365, Acts of the 68th
4 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
5 Civil Statutes), is repealed.

6 SECTION 12. (a) This Act takes effect September 1, 1987.

7 (b) A person is not required to be registered under this Act
8 until January 1, 1988.

9 (c) A lay midwife who holds a letter of completion issued by
10 the Texas Department of Health on or before August 31, 1987, is
11 entitled to a certificate of registration on application to the
12 department. On renewal of that certificate, the lay midwife must
13 present evidence satisfactory to the department of training of the
14 type offered by an approved lay midwifery course under Section 10,
15 Chapter 365, Acts of the 68th Legislature, Regular Session, 1983
16 (Article 4512i, Vernon's Texas Civil Statutes), as amended by this
17 Act.

18 SECTION 13. The importance of this legislation and the
19 crowded condition of the calendars in both houses create an
20 emergency and an imperative public necessity that the
21 constitutional rule requiring bills to be read on three several
22 days in each house be suspended, and this rule is hereby suspended.

By: Uribe

S.B. No. 780

(In the Senate - Filed March 10, 1987; March 10, 1987, read first time and referred to Committee on Health and Human Services; May 8, 1987, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; May 8, 1987, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	PNV	Absent
Brooks	x			
Uribe	x			
Edwards				x
Johnson	x			
Parmer	x			
Truan	x			
Washington	x			
Whitmire	x			
Zaffirini	x			

COMMITTEE SUBSTITUTE FOR S.B. No. 780

By: Uribe

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of lay midwives; providing criminal and civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. LAY MIDWIFERY BOARD. The Texas Board of Health shall appoint a lay midwifery board composed of:

(1) six [~~three~~] lay midwives with at least five [~~three~~] years of experience in the practice of lay midwifery, no more than two [~~one~~] of whom may be [a] licensed health care professionals [~~professional~~];

(2) one certified nurse-midwife;

(3) a person licensed to practice medicine who is certified by the American College of Obstetricians and Gynecologists;

(4) one person licensed to practice medicine who is certified by the American Board of Pediatricians or the American Academy of Family Physicians; and

(5) three persons who are not practicing or trained in a health care profession and who represent the public interest.

SECTION 2. Subsection (a), Section 7, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The department shall hire an executive secretary after consultation with the lay midwifery board to perform administrative duties, including keeping the minutes of lay midwifery board meetings, maintaining records about approved training courses, and maintaining records of persons who are registered under [~~have received a letter of completion as described in~~] this Act.

SECTION 3. Subsection (c), Section 8, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The lay midwifery board by rule [~~department~~] shall establish a procedure for reporting and processing complaints relating to lay midwifery practice in Texas. The Texas Board of Health must approve the rules adopted under this subsection.

SECTION 4. Section 10, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended by adding Subsections (d) and (e) to read as follows:

(d) To be approved by the Texas Board of Health, a lay midwifery training course must include training in:

(1) the use and administration of prophylaxis to prevent ophthalmia neonatorum; and

(2) cardiopulmonary resuscitation of the type recommended by the American Heart Association for certification by that

association in basic life support cardiopulmonary resuscitation for adults and infants or any other type considered appropriate by the board.

(e) The Texas Board of Health shall prescribe a standard final examination for lay midwifery training courses.

SECTION 5. Subsection (a), Section 11, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person who has completed an approved lay midwifery training course or who has comparable training approved by the lay midwifery board is entitled to take the final examination prescribed by the Texas Board of Health ~~[of the training course]~~.

SECTION 6. Section 13, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. REGISTRATION ~~[IDENTIFICATION]~~ REQUIREMENT. (a) A ~~[in--December--of--each--year;--a]~~ person may not practice ~~[who practices]~~ lay midwifery in this state unless the person is registered with the department. An applicant for registration must apply to the department on a form prescribed by the department. The application form must be accompanied by a nonrefundable application fee set by the department in an amount not to exceed \$25. The application form must include: ~~[shall--identify--himself as--a--lay--midwife--by--appearing--in--person--before--the--county--clerk--of--the--county--in--which--the--person--resides--or--before--the--county--clerk of--each--county--in--which--the--person--practices--lay--midwifery--and delivering--to--the--county--clerk--a--verified--identification--form--that contains--]~~

(1) the person's name, residence, and post office address;

(2) the person's date and place of birth;

(3) the location of the person's practice according to counties; and

(4) other information the department determines necessary ~~[for the identification of lay midwives]~~.

(b) The applicant must also file with the application documentation in the form required by the rules of the department showing that the applicant has completed an approved lay midwifery training course and passed the final examination prescribed by the Texas Board of Health. ~~[The--identification--form--shall--be prescribed--by--the--department--]~~

(c) At the time of registration, the department ~~[The county clerk]~~ shall provide each lay midwife ~~[who--identifies--himself]~~ a written notice stating ~~[of]~~ a lay midwife's legal responsibilities under the laws and rules of this state on a form prescribed by the department. Failure to receive the notice does not constitute a defense to prosecution for acts committed in violation of the laws and rules of this state.

(d) The department shall provide each county clerk and each local registrar of births within each county with the name of each registered lay midwife who practices in that county ~~[county clerk shall retain--for--the--county--clerk's--records--a--copy--of--each identification--form--The--county--clerk--shall--send--the--original identification--form--to--the--department--The--county--clerk--may--charge a--reasonable--fee--for--these--services--under--Article--3930,--Revised Statutes]~~.

(e) The department shall issue a certificate of registration to a lay midwife who meets the training and examination requirements of this section and pays the registration fee set by the department in an amount not to exceed \$25. A certificate of registration is issued for the calendar year expiring on December 31. The department by rule may prorate the registration fee so that an initial registrant pays only that portion of the fee allocable to the number of whole or partial months remaining in the year after the month the certificate is issued.

(f) The lay midwifery board shall adopt rules relating to the renewal of a certificate of registration.

SECTION 7. Section 14, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. ADDITIONAL INFORMATION. (a) The department may

1 require information in addition to that required by Subsection (a)
 2 of Section 13 of this Act if it determines the additional
 3 information is necessary and appropriate to ascertain the nature
 4 and extent of lay midwifery in this state. The department may not
 5 require information regarding any act that is prohibited under this
 6 Act.

7 (b) Information received under this section may not be made
 8 public so as to disclose the identity of any person to whom the
 9 information relates. This information is not a public record as
 10 defined in Chapter 424, Acts of the 63rd Legislature, Regular
 11 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

12 (c) The department shall prescribe forms for the additional
 13 information and shall distribute those forms to registered lay
 14 midwives. Each lay midwife must complete and return the forms to
 15 the department ~~[the county clerks of this state]~~.

16 ~~[(d)--When a person identifies himself as a lay midwife under~~
 17 ~~Section 13 of this Act, the county clerk shall give a copy of any~~
 18 ~~form for additional information to the person. The person shall~~
 19 ~~complete the form and return it with the identification form to the~~
 20 ~~county clerk.~~

21 ~~[(e)--The county clerk shall send these forms to the~~
 22 ~~department].~~

23 SECTION 8. Chapter 365, Acts of the 68th Legislature,
 24 Regular Session, 1983 (Article 4512i, Vernon's Texas Civil
 25 Statutes), is amended by adding Section 14A to read as follows:

26 Sec. 14A. SUSPENSION, REVOCATION, OR DENIAL OF CERTIFICATE.

27 (a) After a hearing, the lay midwifery board may suspend or revoke
 28 a certificate of registration or may deny the renewal of a
 29 certificate of registration of a lay midwife who practices in
 30 violation of this Act. The lay midwifery board by rule shall
 31 establish specific grounds for the suspension, revocation, or
 32 denial of a certificate.

33 (b) A hearing on the suspension, revocation, or denial of a
 34 certificate of registration is subject to the Administrative
 35 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
 36 Civil Statutes).

37 SECTION 9. Section 15, Chapter 365, Acts of the 68th
 38 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
 39 Civil Statutes), is amended to read as follows:

40 Sec. 15. ROSTER. (a) The department shall maintain a
 41 roster of all persons registered ~~[identified]~~ to practice lay
 42 midwifery.

43 (b) The roster shall contain for each person the information
 44 required on the registration application ~~[identification]~~ form
 45 under Subsection (a) of Section 13 of this Act and other
 46 information that the department determines necessary to identify
 47 with accuracy each lay midwife who is registered ~~[identified]~~ under
 48 this Act. This information shall be a public record as defined in
 49 Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973
 50 (Article 6252-17a, Vernon's Texas Civil Statutes).

51 SECTION 10. Section 16, Chapter 365, Acts of the 68th
 52 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
 53 Civil Statutes), is amended by amending Subsection (b) and by
 54 adding Subsection (h) to read as follows:

55 (b) The department with the advice of the lay midwifery
 56 board shall prescribe the form of the written disclosure required
 57 by this section, which shall include the information that a lay
 58 midwife:

59 (1) may assist only in normal childbirth;

60 (2) has or does not have an arrangement with a local
 61 physician for referring patients who have complications that occur
 62 before or during childbirth; and

63 (3) may not:

64 (A) administer a prescription drug without a physician's
 65 supervision, except for prophylaxis approved by the Texas Board of
 66 Health to prevent ophthalmia neonatorum;

67 (B) perform a Caesarean section; ~~[7]~~ or

68 (C) perform an episiotomy ~~[7--and]~~

69 ~~[(4)--has or has not passed the lay midwife training course~~
 70 ~~final examination approved by the board].~~

subject to and does not constitute a violation of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes).

Sec. 22. ENFORCEMENT; CIVIL PENALTY. (a) The attorney general or a district or county attorney may institute a civil action to compel compliance with this Act.

(b) In addition to any injunctive relief or any other remedy provided by law, if a person violates this Act or a rule adopted under this Act, the department may assess a civil penalty against that person as provided by this section.

(c) The department may assess the civil penalty in an amount not to exceed \$500. In determining the amount of the penalty, the department shall consider the seriousness of the violation.

(d) If, after examination of a possible violation and the facts relating to that possible violation, the department concludes that a violation has occurred, the department shall issue a preliminary report that states the facts on which the conclusion is based, the fact that a civil penalty is to be imposed, and the amount to be assessed. Not later than the 10th day after the date on which the department issues the preliminary report, the department shall send a copy of the report to the person charged with the violation, together with a statement of the right of the person to a hearing relating to the alleged violation and the amount of the penalty.

(e) Not later than the 20th day after the date on which the report is sent, the person charged must either make a written request for a hearing or remit the amount of the civil penalty to the department. Failure either to request a hearing or to remit the amount of the civil penalty within the time provided by this subsection results in a waiver of a right to a hearing under this Act. If the person charged requests a hearing, the hearing shall be conducted in the manner provided by Section 14A of this Act. If it is determined after hearing that the person has committed the alleged violation, the department shall give written notice to the person of the findings established by the hearing and the amount of the penalty and shall enter an order requiring the person to pay the penalty.

(f) Not later than the 30th day after the date on which the notice is received, the person charged must pay the civil penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, remit the assessed amount to the department for deposit in an escrow account. If, after judicial review, it is determined that no violation occurred or that the amount of the penalty should be reduced, the department shall remit the appropriate amount to the person charged with the violation not later than the 30th day after the date on which the judicial determination becomes final.

(g) Failure to remit the amount of the civil penalty to the department within the time provided by Subsection (f) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(h) A civil penalty owed under this section may be recovered in a civil action brought by the attorney general at the request of the department.

Sec. 23. PROVISION OF SUPPORT SERVICES. (a) The department and a local health department, a public health district, or a local health unit that is owned, operated, or leased by a political subdivision of this state shall provide medical and laboratory support services to pregnant women and newborns who are clients of lay midwives for the performance of the prenatal standard serological test for syphilis and the newborn screening tests required by law for phenylketonuria, hypothyroidism, and other inheritable diseases, if those services are available to other clients or patients of that entity. The entity may charge a reasonable fee for the services, but a person may not be denied services because of inability to pay.

(b) For the purposes of this section, "local health department," "public health district," and "local health unit" have the meanings assigned by the Local Public Health Reorganization Act (Article 4436b, Vernon's Texas Civil Statutes).

SECTION 14. Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Subdivision (7) to read as follows:

(7) (A) It is the policy of this state that the prevention of ophthalmia neonatorum in newborn infants is of paramount importance for the protection of the health of Texas children.

(B) Authority to delegate medical acts to a lay midwife registered under Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is recognized as applicable to the possession of and administration of eye prophylaxis for the prevention of ophthalmia neonatorum.

(C) A physician who has issued such a standing delegation order is immune from liability in connection with acts performed pursuant to the standing delegation order as long as a lay midwife has provided proof of compliance with the Lay Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) prior to the issuance of the order.

SECTION 15. Section 12, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is repealed.

SECTION 16. (a) This Act takes effect September 1, 1987.

(b) A person is not required to be registered under this Act until January 1, 1990.

(c) A person engaged in the practice of lay midwifery on the effective date of this Act who has practiced for not less than two years and who has complied with the identification requirements imposed under Section 13, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), as those requirements existed on August 31, 1987, is entitled to apply to take the lay midwifery training course final examination prescribed by the Texas Board of Health without completing an approved lay midwifery training course. The person must pass the examination not later than December 31, 1989. If the person does not pass the examination before January 1, 1990, the person must complete an approved lay midwifery training course to qualify for reexamination.

(d) A health care professional serving as a member of the lay midwifery board on the effective date of this Act is entitled to continue to serve until the expiration of that person's term. On the expiration of the terms of health care professionals whose terms expire January 31, 1989, and January 31, 1991, the Texas Board of Health shall appoint lay midwives to fill the vacated positions.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

* * * * *

Austin, Texas
May 8, 1987

Hon. William P. Hobby
President of the Senate

Sir:

We, your Committee on Health and Human Services to which was referred S.B. No. 780, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do not pass, but that the Committee Substitute adopted in lieu thereof do pass and be printed.

Brooks, Chairman

SENATE FAVORABLY AS SUBSTITUTED COMMITTEE REPORT

Lt. Governor William P. Hobby
President of the Senate

8
5-7-87

(date)/(time)

Sir:

We, your Committee on HEALTH AND HUMAN SERVICES to which was referred
SB 780 by Uribe have on 5-7, 1987, had the same
(measure) (sponsor) (hearing date)

under consideration and I am instructed to report it back with the recommendation (s) that it

☒ do pass as substituted, and be printed
☒ the caption remained the same as original measure
() the caption changed with adoption of the substitute

() do pass as substituted, and be ordered not printed

() and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes () no

A revised fiscal note was requested. () yes () no

An actuarial analysis was requested. () yes () no

Considered by subcommittee. () yes () no

Senate Sponsor of House Measure _____

The measure was reported from Committee by the following vote:

	YEA	NAY	PNV	ABSENT
Brooks, Chairman	<input checked="" type="checkbox"/>			
Uribe, Vice Chairman	<input checked="" type="checkbox"/>			
Edwards				<input checked="" type="checkbox"/>
Johnson	<input checked="" type="checkbox"/>			
Parmer	<input checked="" type="checkbox"/>			
Truan	<input checked="" type="checkbox"/>			
Washington	<input checked="" type="checkbox"/>			
Whitmire	<input checked="" type="checkbox"/>			
Zaffirini	<input checked="" type="checkbox"/>			
TOTAL VOTES	8	0		

Linda M. Kristofilis
COMMITTEE CLERK

Brooks
CHAIRMAN

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 22, 1987

TO: Honorable Chet Brooks, Chairman
Committee on Health and Human Services
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 780
By: Uribe

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Bill No. 780 (relating to the regulation of lay midwives) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would authorize the Department of Health to require mandatory training and examination for lay midwives registered under this Act. The Department would be authorized to issue a certificate of registration to a lay midwife who meets the training and examination requirements and who pays a registration fee in an amount not to exceed \$25.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Revenue Gain to the General Revenue Fund</u>	<u>Probable Cost Out of the General Revenue Fund</u>	<u>Change in Number of State Employees from FY 1987</u>
1988	\$ 31,000	\$ 32,742	+1
1989	11,000	25,502	+1
1990	11,000	25,502	+1
1991	11,000	25,502	+1
1992	11,000	25,502	+1

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Department of Health;
LBB Staff: JO, HES, JWH, AMF, AF

By: Uribe

S.B. No. 780

Substitute the following for S.B. No. 780:

By: Uribe

C.S.S.B. No. 780

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of lay midwives; providing criminal and civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. LAY MIDWIFERY BOARD. The Texas Board of Health shall appoint a lay midwifery board composed of:

(1) six [~~three~~] lay midwives with at least five [~~three~~] years of experience in the practice of lay midwifery, no more than two [~~one~~] of whom may be [a] licensed health care professionals [~~professional~~];

(2) one certified nurse-midwife;

(3) a person licensed to practice medicine who is certified by the American College of Obstetricians and Gynecologists;

(4) one person licensed to practice medicine who is certified by the American Board of Pediatricians or the American Academy of Family Physicians; and

(5) three persons who are not practicing or trained in a health care profession and who represent the public interest.

SECTION 2. Subsection (a), Section 7, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i,

5/12/87 5/8/87

1 Vernon's Texas Civil Statutes), is amended to read as follows:

2 (a) The department shall hire an executive secretary after¹
3 consultation with the lay midwifery board to perform administrative
4 duties, including keeping the minutes of lay midwifery board
5 meetings, maintaining records about approved training courses, and
6 maintaining records of persons who are registered under [~~have~~
7 ~~received-a-letter-of-completion-as-described-in~~] this Act.

8 SECTION 3. Subsection (c), Section 8, Chapter 365, Acts of
9 the 68th Legislature, Regular Session, 1983 (Article 4512i,
10 Vernon's Texas Civil Statutes), is amended to read as follows:

11 (c) The lay midwifery board by rule [~~department~~] shall
12 establish a procedure for reporting and processing complaints
13 relating to lay midwifery practice in Texas. The Texas Board of
14 Health must approve the rules adopted under this subsection.

15 SECTION 4. Section 10, Chapter 365, Acts of the 68th
16 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
17 Civil Statutes), is amended by adding Subsections (d) and (e) to
18 read as follows:

19 (d) To be approved by the Texas Board of Health, a lay
20 midwifery training course must include training in:

21 (1) the use and administration of prophylaxis to prevent
22 ophthalmia neonatorum; and

23 (2) cardiopulmonary resuscitation of the type recommended by
24 the American Heart Association for certification by that
25 association in basic life support cardiopulmonary resuscitation for

1 adults and infants or any other type considered appropriate by the
2 board.

3 (e) The Texas Board of Health shall prescribe a standard
4 final examination for lay midwifery training courses.

5 SECTION 5. Subsection (a), Section 11, Chapter 365, Acts of
6 the 68th Legislature, Regular Session, 1983 (Article 4512i,
7 Vernon's Texas Civil Statutes), is amended to read as follows:

8 (a) A person who has completed an approved lay midwifery
9 training course or who has comparable training approved by the lay
10 midwifery board is entitled to take the final examination
11 prescribed by the Texas Board of Health [~~ef-the--training--course~~].

12 SECTION 6. Section 13, Chapter 365, Acts of the 68th
13 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
14 Civil Statutes), is amended to read as follows:

15 Sec. 13. REGISTRATION [~~IDENTIFICATION~~] REQUIREMENT. (a) A
16 [~~In-December--of--each--year~~7--a] person may not practice [~~who~~
17 ~~practices~~] lay midwifery in this state unless the person is
18 registered with the department. An applicant for registration must
19 apply to the department on a form prescribed by the department.
20 The application form must be accompanied by a nonrefundable
21 application fee set by the department in an amount not to exceed
22 \$25. The application form must include: [~~shall-identify-himself~~
23 ~~as-a-lay-midwife-by-appearing-in-person-before-the-county-clerk--of~~
24 ~~the--county--in-which-the-person-resides-or-before-the-county-clerk~~
25 ~~of-each-county-in-which-the--person--practices--lay--midwifery--and~~

1 delivering--to-the-county-clerk-a-verified-identification-form-that
2 contains-]

3 (1) the person's name, residence, and post office address;
4 (2) the person's date and place of birth;^{3/4}
5 (3) the location of the person's practice according to
6 counties; and

7 (4) other information the department determines necessary
8 [~~for-the-identification-of-lay-midwives~~].

9 (b) The applicant must also file with the application
10 documentation in the form required by the rules of the department
11 showing that the applicant has completed an approved lay midwifery
12 training course and passed the final examination prescribed by the
13 Texas Board of Health. [~~The--identification--form--shall--be~~
14 prescribed-by-the-department-]

15 (c) At the time of registration, the department [~~The--county~~
16 ~~clerk~~] shall provide each lay midwife [~~who-identifies-himself~~] a
17 written notice stating [~~of~~] a lay midwife's legal responsibilities
18 under the laws and rules of this state on a form prescribed by the
19 department. Failure to receive the notice does not constitute a
20 defense to prosecution for acts committed in violation of the laws
21 and rules of this state.

22 (d) The department shall provide each county clerk and each
23 local registrar of births within each county with the name of each
24 registered lay midwife who practices in that county [~~county--clerk~~
25 ~~shall--retain--for--the--county--clerk's--records--a--copy--of--each~~

1 ~~identification-form--The-county--clerk--shall--send--the--original~~
2 ~~identification-form-to-the-department--The-county-clerk-may-charge~~
3 ~~a--reasonable--fee--for--these-services-under-Article-3930,-Revised~~
4 ~~Statutes].~~

5 (e) The department shall issue a certificate of registration
6 to a lay midwife who meets the training and examination
7 requirements of this section and pays the registration fee set by
8 the department in an amount not to exceed \$25. A certificate of
9 registration is issued for the calendar year expiring on December
10 31. The department by rule may prorate the registration fee so
11 that an initial registrant pays only that portion of the fee
12 allocable to the number of whole or partial months remaining in the
13 year after the month the certificate is issued.

14 (f) The lay midwifery board shall adopt rules relating to
15 the renewal of a certificate of registration.

16 SECTION 7. Section 14, Chapter 365, Acts of the 68th
17 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
18 Civil Statutes), is amended to read as follows:

19 Sec. 14. ADDITIONAL INFORMATION. (a) The department may
20 require information in addition to that required by Subsection (a)
21 of Section 13 of this Act if it determines the additional
22 information is necessary and appropriate to ascertain the nature
23 and extent of lay midwifery in this state. The department may not
24 require information regarding any act that is prohibited under this
25 Act.

1 (b) Information received under this section may not be made
2 public so as to disclose the identity of any person to whom the
3 information relates. This information is not a public record as
4 defined in Chapter 424, Acts of the 63rd Legislature, Regular
5 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

6 (c) The department shall prescribe forms for the additional³/₆
7 information and shall distribute those forms to registered lay
8 midwives. Each lay midwife must complete and return the forms to
9 the department [the-county-clerks-of-this-state-

10 [~~(d)--When-a-person-identifies-himself-as-a-lay-midwife-under~~
11 ~~Section--13--of-this-Act,-the-county-clerk-shall-give-a-copy-of-any~~
12 ~~form-for-additional-information-to-the-person---The--person--shall~~
13 ~~complete-the-form-and-return-it-with-the-identification-form-to-the~~
14 ~~county-clerk-~~

15 [~~(e)--The---county--clerk--shall--send--these--forms--to--the~~
16 ~~department]~~.

17 SECTION 8. Chapter 365, Acts of the 68th Legislature,
18 Regular Session, 1983 (Article 4512i, Vernon's Texas Civil
19 Statutes), is amended by adding Section 14A to read as follows:

20 Sec. 14A. SUSPENSION, REVOCATION, OR DENIAL OF CERTIFICATE.

21 (a) After a hearing, the lay midwifery board may suspend or revoke
22 a certificate of registration or may deny the renewal of a
23 certificate of registration of a lay midwife who practices in
24 violation of this Act. The lay midwifery board by rule shall
25 establish specific grounds for the suspension, revocation, or

1 denial of a certificate.

2 (b) A hearing on the suspension, revocation, or denial of a
3 certificate of registration is subject to the Administrative
4 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
5 Civil Statutes).

6 SECTION 9. Section 15, Chapter 365, Acts of the 68th
7 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
8 Civil Statutes), is amended to read as follows: 7

9 Sec. 15. ROSTER. (a) The department shall maintain a
10 roster of all persons registered [~~identified~~] to practice lay
11 midwifery.

12 (b) The roster shall contain for each person the information
13 required on the registration application [~~identification~~] form
14 under Subsection (a) of Section 13 of this Act and other
15 information that the department determines necessary to identify
16 with accuracy each lay midwife who is registered [~~identified~~] under
17 this Act. This information shall be a public record as defined in
18 Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973
19 (Article 6252-17a, Vernon's Texas Civil Statutes).

20 SECTION 10. Section 16, Chapter 365, Acts of the 68th
21 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
22 Civil Statutes), is amended by amending Subsection (b) and by
23 adding Subsection (h) to read as follows:

24 (b) The department with the advice of the lay midwifery
25 board shall prescribe the form of the written disclosure required

1 by this section, which shall include the information that a lay
2 midwife:

3 (1) may assist only in normal childbirth;

4 (2) has or does not have an arrangement with a local
5 physician for referring patients who have complications that occur
6 before or during childbirth; and

7 (3) may not:

8 (A) administer a prescription drug without a physician's⁷
9 supervision, except for prophylaxis approved by the Texas Board of
10 Health to prevent ophthalmia neonatorum;

11 (B) perform a Caesarean section;[7] or

12 (C) perform an episiotomy[7-and

13 [~~{4}--has--or--has-not-passed-the-lay-midwife-training-course~~
14 ~~final-examination-approved-by-the-board~~].

15 (h) The disclosure form must include a statement explaining
16 that state law requires every newborn child to be tested for
17 certain inheritable diseases. The lay midwifery board shall
18 promulgate rules concerning the referral of newborns to licensed
19 practitioners for the performance of these tests.

20 SECTION 11. Section 17, Chapter 365, Acts of the 68th
21 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
22 Civil Statutes), is amended to read as follows:

23 Sec. 17. PROHIBITED ACTS. (a) Except as provided by
24 Section 21 of this Act, a [A] lay midwife may not:

25 (1) administer a prescription drug to a client except under

1 the supervision of a licensed physician in accordance with the laws
2 of this state;

3 (2) use forceps or surgical instruments for any procedure
4 other than cutting the umbilical cord or providing emergency first
5 aid during delivery;

6 (3) remove placenta by invasive techniques;

7 (4) advance or retard labor or delivery by using medicines
8 or mechanical devices;

9 (5) [~~use--in--connection-with-his-name-a-title,-abbreviation~~^{8/9}
10 ~~or-any-designation-tending-to-imply-that-he-is--a--"registered"--or~~
11 ~~"certified"--lay--midwife--as--opposed--to--one--who-has-identified~~
12 ~~himself-in-compliance-with-this-Act,-or~~

13 [~~6~~] assist at childbirth other than a normal childbirth
14 except in an emergency situation that poses an immediate threat to
15 the life of the mother or newborn; or

16 (6) use in connection with his or her name a title,
17 abbreviation, or any designation other than "registered lay midwife."

18 (b) A lay midwife may not advertise or otherwise represent
19 that the lay midwife is a medical doctor or a graduate of a medical
20 school unless the lay midwife is licensed to practice medicine by
21 the Texas State Board of Medical Examiners.

22 SECTION 12. Section 18, Chapter 365, Acts of the 68th
23 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
24 Civil Statutes), is amended to read as follows:

25 Sec. 18. PENALTIES. (a) A person [~~lay-midwife~~] commits an
26 offense if the person [~~lay-midwife~~] knowingly or intentionally acts
27 as a lay midwife without being registered under [~~commits-an-act~~

1 ~~prohibited-by]~~ this Act.

2 (b) An offense under Subsection (a) of this section is a
3 Class C misdemeanor.

4 (c) A lay midwife who knowingly or intentionally fails to
5 comply with the disclosure requirement of this Act commits a Class
6 C misdemeanor.

7 [~~(d)--A--lay--midwife--who--knowingly--or--intentionally--fails--to~~⁹
8 ~~comply-with-the-identification-requirement-of-this--Act--commits--a~~
9 ~~Class-C-misdemeanor.~~]

10 SECTION 13. Chapter 365, Acts of the 68th Legislature,
11 Regular Session, 1983 (Article 4512i, Vernon's Texas Civil
12 Statutes), is amended by adding Sections 21, 22, and 23 to read as
13 follows:

14 Sec. 21. PROPHYLACTIC TREATMENT OF NEWBORNS. (A) Each lay
15 midwife shall administer prophylaxis approved by the Texas Board of
16 Health to prevent ophthalmia neonatorum to each infant the lay
17 midwife delivers under standing orders by a licensed physician or
18 by any agent or employee of the Texas Department of Health under
19 standing orders by a licensed physician working for the department.

20 (b) Subject to the availability of funds, the department
21 shall furnish prophylaxis approved by the Texas Board of Health to
22 prevent ophthalmia neonatorum to each lay midwife registered under
23 this Act, subject to the restrictions of Subsection (c) of this
24 section.

25 (c) A lay midwife registered under this chapter may possess

1 and administer prophylaxis to prevent ophthalmia neonatorum only
2 under standing orders from a licensed physician as delineated in
3 Section 3.06 of the Medical Practice Act (Article 4495b, Vernon's
4 Texas Civil Statutes). ~~of prophylaxis to prevent ophthalmia~~
~~neonatorum~~

5 (d) The distribution or delivery to a lay midwife registered
6 under this Act by any individual authorized by this Act is not
7 subject to and does not constitute a violation of Chapter 425, Acts
8 of the 56th¹⁰ Legislature, Regular Session, 1959 (Article 4476-14,
9 Vernon's Texas Civil Statutes).

10 Sec. 22. ENFORCEMENT; CIVIL PENALTY. (a) The attorney
11 general or a district or county attorney may institute a civil
12 action to compel compliance with this Act.

13 (b) In addition to any injunctive relief or any other remedy
14 provided by law, if a person violates this Act or a rule adopted
15 under this Act, the department may assess a civil penalty against
16 that person as provided by this section.

17 (c) The department may assess the civil penalty in an amount
18 not to exceed \$500. In determining the amount of the penalty, the
19 department shall consider the seriousness of the violation.

20 (d) If, after examination of a possible violation and the
21 facts relating to that possible violation, the department concludes
22 that a violation has occurred, the department shall issue a
23 preliminary report that states the facts on which the conclusion is
24 based, the fact that a civil penalty is to be imposed, and the
25 amount to be assessed. Not later than the 10th day after the date

1 on which the department issues the preliminary report, the
2 department shall send a copy of the report to the person charged
3 with the violation, together with a statement of the right of the
4 person to a hearing relating to the alleged violation and the
5 amount of the penalty.

6 (e) Not later than the 20th day after the date on which the
7 report is sent, the person charged must either make a written
8 request for a hearing or remit the amount of the civil penalty to
9 the department. Failure either to request a hearing or to remit
10 the amount of the civil penalty within the time provided by this
11 subsection results in a waiver of a right to a hearing under this
12 Act. If the person charged requests a hearing, the hearing shall
13 be conducted in the manner provided by Section 14A of this Act. If
14 it is determined after hearing that the person has committed the
15 alleged violation, the department shall give written notice to the
16 person of the findings established by the hearing and the amount of
17 the penalty and shall enter an order requiring the person to pay
18 the penalty.

19 (f) Not later than the 30th day after the date on which the
20 notice is received, the person charged must pay the civil penalty
21 in full or, if the person wishes to contest either the amount of
22 the penalty or the fact of the violation, remit the assessed amount
23 to the department for deposit in an escrow account. If, after
24 judicial review, it is determined that no violation occurred or
25 that the amount of the penalty should be reduced, the department

1 shall remit the appropriate amount to the person charged with the
2 violation not later than the 30th day after the date on which the
3 judicial determination becomes final.

4 (g) Failure to remit the amount of the civil penalty to the
5 department within the time provided by Subsection (f) of this
6 section results in a waiver of all legal rights to contest the
7 violation or the amount of the penalty.

8 (h) A civil penalty owed under this section may be recovered
9 in a civil action brought by the attorney general at the request of
10 the department. ¹²/₁₃

11 Sec. 23. PROVISION OF SUPPORT SERVICES. (a) The department
12 and a local health department, a public health district, or a local
13 health unit that is owned, operated, or leased by a political
14 subdivision of this state shall provide medical and laboratory
15 support services to pregnant women and newborns who are clients of
16 lay midwives for the performance of the prenatal standard
17 serological test for syphilis and the newborn screening tests
18 required by law for phenylketonuria, hypothyroidism, and other
19 inheritable diseases, if those services are available to other
20 clients or patients of that entity. The entity may charge a
21 reasonable fee for the services, but a person may not be denied
22 services because of inability to pay.

23 (b) For the purposes of this section, "local health
24 department," "public health district," and "local health unit" have
25 the meanings assigned by the Local Public Health Reorganization Act

1 (Article 4436b, Vernon's Texas Civil Statutes).

2 SECTION 14. Section 3.06, Medical Practice Act (Article
3 4495b, Vernon's Texas Civil Statutes), is amended by adding
4 ^{Section (F)}
~~Subdivision (7)~~ to read as follows:

5 ^F
~~(V)~~ ¹
~~(A)~~ It is the policy of this state that the prevention
6 of ophthalmia neonatorum in newborn infants is of paramount
7 importance for the protection of the health of Texas children.

8 ²
~~(B)~~ Authority to delegate medical acts to a lay midwife
9 registered under Chapter 365, Acts of the 68th Legislature, Regular
10 Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is¹⁾
11 recognized as applicable to the possession of and administration of¹²⁾
12 eye prophylaxis for the prevention of ophthalmia neonatorum.

13 ³
~~(C)~~ A physician who has issued such a standing delegation
14 order is immune from liability in connection with acts performed
15 pursuant to the standing delegation order as long as a lay midwife
16 ~~Chapter 365, Acts of the 68th Legislature, Regular Session, 1983~~
has provided proof of compliance with ~~the Lay Midwifery Act~~
17 (Article 4512i, Vernon's Texas Civil Statutes) prior to the
18 issuance of the order.

19 SECTION 15. Section 12, Chapter 365, Acts of the 68th
20 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
21 Civil Statutes), is repealed.

22 SECTION 16. (a) This Act takes effect September 1, 1987.

23 (b) A person is not required to be registered under this Act
24 until January 1, 1990.

25 (c) A person engaged in the practice of lay midwifery on the

1 effective date of this Act who has practiced for not less than two
2 years and who has complied with the identification requirements
3 imposed under Section 13, Chapter 365, Acts of the 68th
4 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
5 Civil Statutes), as those requirements existed on August 31, 1987,
6 is entitled to apply to take the lay midwifery training course
7 final examination prescribed by the Texas Board of Health without
8 completing an approved lay midwifery training course. The person
9 must pass the examination not later than December 31, 1989. If the
10 person does not pass the examination before January 1, 1990, the
11 person must complete an approved lay midwifery training course to ¹⁷/₆
12 qualify for reexamination.

13 (d) A health care professional serving as a member of the
14 lay midwifery board on the effective date of this Act is entitled
15 to continue to serve until the expiration of that person's term.
16 On the expiration of the terms of health care professionals whose
17 terms expire January 31, 1989, and January 31, 1991, the Texas
18 Board of Health shall appoint lay midwives to fill the vacated
19 positions.

20 SECTION 17. The importance of this legislation and the
21 crowded condition of the calendars in both houses create an
22 emergency and an imperative public necessity that the
23 constitutional rule requiring bills to be read on three several
24 days in each house be suspended, and this rule is hereby suspended.

May 15 1987 Engrossed
Patricia [Signature]
Engrossing Clerk

HOUSE OF REPRESENTATIVES

I certify that the attached is a true and correct
copy of SB 780 which was
received from the Senate MAY 18 1987 and
referred to the Committee on Public Health
[Signature]
Chief Clerk of the House

By: Uribe
(Madla)

S.B. No. 780

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of lay midwives; providing criminal and civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. LAY MIDWIFERY BOARD. The Texas Board of Health shall appoint a lay midwifery board composed of:

(1) six [~~three~~] lay midwives with at least five [~~three~~] years of experience in the practice of lay midwifery, no more than two [~~one~~] of whom may be [a] licensed health care professionals [~~professional~~];

(2) one certified nurse-midwife;

(3) a person licensed to practice medicine who is certified by the American College of Obstetricians and Gynecologists;

(4) one person licensed to practice medicine who is certified by the American Board of Pediatricians or the American Academy of Family Physicians; and

(5) three persons who are not practicing or trained in a health care profession and who represent the public interest.

SECTION 2. Subsection (a), Section 7, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The department shall hire an executive secretary after

1 consultation with the lay midwifery board to perform administrative
2 duties, including keeping the minutes of lay midwifery board
3 meetings, maintaining records about approved training courses, and
4 maintaining records of persons who are registered under [~~have~~
5 ~~received-a-letter-of-completion-as-described-in~~] this Act.

6 SECTION 3. Subsection (c), Section 8, Chapter 365, Acts of
7 the 68th Legislature, Regular Session, 1983 (Article 4512i,
8 Vernon's Texas Civil Statutes), is amended to read as follows:

9 (c) The lay midwifery board by rule [~~department~~] shall
10 establish a procedure for reporting and processing complaints
11 relating to lay midwifery practice in Texas. The Texas Board of
12 Health must approve the rules adopted under this subsection.

13 SECTION 4. Section 10, Chapter 365, Acts of the 68th
14 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
15 Civil Statutes), is amended by adding Subsections (d) and (e) to
16 read as follows:

17 (d) To be approved by the Texas Board of Health, a lay
18 midwifery training course must include training in:

19 (1) the use and administration of prophylaxis to prevent
20 ophthalmia neonatorum; and

21 (2) cardiopulmonary resuscitation of the type recommended by
22 the American Heart Association for certification by that
23 association in basic life support cardiopulmonary resuscitation for
24 adults and infants or any other type considered appropriate by the
25 board.

26 (e) The Texas Board of Health shall prescribe a standard

final examination for lay midwifery training courses.

SECTION 5. Subsection (a), Section 11, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person who has completed an approved lay midwifery training course or who has comparable training approved by the lay midwifery board is entitled to take the final examination prescribed by the Texas Board of Health ~~[of-the-training-course]~~.

SECTION 6. Section 13, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. REGISTRATION ~~[IDENTIFICATION]~~ REQUIREMENT. (a) A ~~[in--December--of--each--year,--a]~~ person may not practice ~~[who practices]~~ lay midwifery in this state unless the person is registered with the department. An applicant for registration must apply to the department on a form prescribed by the department. The application form must be accompanied by a nonrefundable application fee set by the department in an amount not to exceed \$25. The application form must include: ~~[shall--identify--himself as--a--lay--midwife--by--appearing--in--person--before--the--county--clerk--of--the--county--in--which--the--person--resides--or--before--the--county--clerk--of--each--county--in--which--the--person--practices--lay--midwifery--and--delivering--to--the--county--clerk--a--verified--identification--form--that contains--]~~

(1) the person's name, residence, and post office address;

(2) the person's date and place of birth;

(3) the location of the person's practice according to counties; and

(4) other information the department determines necessary ~~[for-the-identification-of-lay-midwives]~~.

(b) The applicant must also file with the application documentation in the form required by the rules of the department showing that the applicant has completed an approved lay midwifery training course and passed the final examination prescribed by the Texas Board of Health. ~~[The--identification--form---shall---be prescribed-by-the-department-]~~

(c) At the time of registration, the department ~~[The-county clerk]~~ shall provide each lay midwife ~~[who--identifies--himself]~~ a written notice stating ~~[of]~~ a lay midwife's legal responsibilities under the laws and rules of this state on a form prescribed by the department. Failure to receive the notice does not constitute a defense to prosecution for acts committed in violation of the laws and rules of this state.

(d) The department shall provide each county clerk and each local registrar of births within each county with the name of each registered lay midwife who practices in that county ~~[county-clerk shall-retain--for--the--county--clerk's--records--a--copy--of--each identification--form---The--county--clerk--shall-send-the-original identification-form-to-the-department--The-county-clerk-may-charge a-reasonable-fee-for-these-services--under--Article--39307--Revised Statutes]~~.

(e) The department shall issue a certificate of registration

1 to a lay midwife who meets the training and examination
2 requirements of this section and pays the registration fee set by
3 the department in an amount not to exceed \$25. A certificate of
4 registration is issued for the calendar year expiring on December
5 31. The department by rule may prorate the registration fee so
6 that an initial registrant pays only that portion of the fee
7 allocable to the number of whole or partial months remaining in the
8 year after the month the certificate is issued.

9 (f) The lay midwifery board shall adopt rules relating to
10 the renewal of a certificate of registration.

11 SECTION 7. Section 14, Chapter 365, Acts of the 68th
12 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
13 Civil Statutes), is amended to read as follows:

14 Sec. 14. ADDITIONAL INFORMATION. (a) The department may
15 require information in addition to that required by Subsection (a)
16 of Section 13 of this Act if it determines the additional
17 information is necessary and appropriate to ascertain the nature
18 and extent of lay midwifery in this state. The department may not
19 require information regarding any act that is prohibited under this
20 Act.

21 (b) Information received under this section may not be made
22 public so as to disclose the identity of any person to whom the
23 information relates. This information is not a public record as
24 defined in Chapter 424, Acts of the 63rd Legislature, Regular
25 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

26 (c) The department shall prescribe forms for the additional

1 information and shall distribute those forms to registered lay
 2 midwives. Each lay midwife must complete and return the forms to
 3 the department [~~the-county-clerks-of-this-state-~~

4 [~~(d)--When-a-person-identifies-himself-as-a-lay-midwife-under~~
 5 ~~Section-13-of-this-Act,-the-county-clerk-shall-give-a-copy--of--any~~
 6 ~~form--for--additional--information-to-the-person--The-person-shall~~
 7 ~~complete-the-form-and-return-it-with-the-identification-form-to-the~~
 8 ~~county-clerk-~~

9 [~~(e)--The--county--clerk--shall--send--these--forms--to---the~~
 10 ~~department]~~.

11 SECTION 8. Chapter 365, Acts of the 68th Legislature,
 12 Regular Session, 1983 (Article 4512i, Vernon's Texas Civil
 13 Statutes), is amended by adding Section 14A to read as follows:

14 Sec. 14A. SUSPENSION, REVOCATION, OR DENIAL OF CERTIFICATE.

15 (a) After a hearing, the lay midwifery board may suspend or revoke
 16 a certificate of registration or may deny the renewal of a
 17 certificate of registration of a lay midwife who practices in
 18 violation of this Act. The lay midwifery board by rule shall
 19 establish specific grounds for the suspension, revocation, or
 20 denial of a certificate.

21 (b) A hearing on the suspension, revocation, or denial of a
 22 certificate of registration is subject to the Administrative
 23 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
 24 Civil Statutes).

25 SECTION 9. Section 15, Chapter 365, Acts of the 68th
 26 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas

1 Civil Statutes), is amended to read as follows:

2 Sec. 15. ROSTER. (a) The department shall maintain a
3 roster of all persons registered [~~identified~~] to practice lay
4 midwifery.

5 (b) The roster shall contain for each person the information
6 required on the registration application [~~identification~~] form
7 under Subsection (a) of Section 13 of this Act and other
8 information that the department determines necessary to identify
9 with accuracy each lay midwife who is registered [~~identified~~] under
10 this Act. This information shall be a public record as defined in
11 Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973
12 (Article 6252-17a, Vernon's Texas Civil Statutes).

13 SECTION 10. Section 16, Chapter 365, Acts of the 68th
14 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
15 Civil Statutes), is amended by amending Subsection (b) and by
16 adding Subsection (h) to read as follows:

17 (b) The department with the advice of the lay midwifery
18 board shall prescribe the form of the written disclosure required
19 by this section, which shall include the information that a lay
20 midwife:

21 (1) may assist only in normal childbirth;

22 (2) has or does not have an arrangement with a local
23 physician for referring patients who have complications that occur
24 before or during childbirth; and

25 (3) may not:

26 (A) administer a prescription drug without a physician's

supervision, except for prophylaxis approved by the Texas Board of Health to prevent ophthalmia neonatorum;

(B) perform a Caesarean section; [7.] or

(C) perform an episiotomy [7.-and

[(4) --has-or-has-not-passed-the-lay-midwife--training--course final-examination-approved-by-the-board].

(h) The disclosure form must include a statement explaining that state law requires every newborn child to be tested for certain inheritable diseases. The lay midwifery board shall promulgate rules concerning the referral of newborns to licensed practitioners for the performance of these tests.

SECTION 11. Section 17, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. PROHIBITED ACTS. (a) Except as provided by Section 21 of this Act, a [A] lay midwife may not:

(1) administer a prescription drug to a client except under the supervision of a licensed physician in accordance with the laws of this state;

(2) use forceps or surgical instruments for any procedure other than cutting the umbilical cord or providing emergency first aid during delivery;

(3) remove placenta by invasive techniques;

(4) advance or retard labor or delivery by using medicines or mechanical devices;

(5) [use-in-connection-with-his-name-a--title,--abbreviation

er--any--designation--tending-to-imply-that-he-is-a-"registered"-or
 "certified"-lay-midwife--as--opposed--to--one--who--has--identified
 himself-in-compliance-with-this-Act,-or

[6] assist at childbirth other than a normal childbirth
 except in an emergency situation that poses an immediate threat to
 the life of the mother or newborn; or

(6) use in connection with his or her name a title,
 abbreviation, or any designation other than "registered lay
 midwife."

(b) A lay midwife may not advertise or otherwise represent
 that the lay midwife is a medical doctor or a graduate of a medical
 school unless the lay midwife is licensed to practice medicine by
 the Texas State Board of Medical Examiners.

SECTION 12. Section 18, Chapter 365, Acts of the 68th
 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
 Civil Statutes), is amended to read as follows:

Sec. 18. PENALTIES. (a) A person [lay-midwife] commits an
 offense if the person [lay-midwife] knowingly or intentionally acts
 as a lay midwife without being registered under [commits--an--act
 prohibited-by] this Act.

(b) An offense under Subsection (a) of this section is a
 Class C misdemeanor.

(c) A lay midwife who knowingly or intentionally fails to
 comply with the disclosure requirement of this Act commits a Class
 C misdemeanor.

[d]--A-lay-midwife-who-knowingly-or-intentionally--fails--to

1 ~~comply--with--the--identification-requirement-of-this-Act-commits-a~~
2 ~~Class-C-misdemeanor-]~~

3 SECTION 13. Chapter 365, Acts of the 68th Legislature,
4 Regular Session, 1983 (Article 4512i, Vernon's Texas Civil
5 Statutes), is amended by adding Sections 21, 22, and 23 to read as
6 follows:

7 Sec. 21. PROPHYLACTIC TREATMENT OF NEWBORNS. (a) Each lay
8 midwife shall administer prophylaxis approved by the Texas Board of
9 Health to prevent ophthalmia neonatorum to each infant the lay
10 midwife delivers under standing orders by a licensed physician or
11 by any agent or employee of the Texas Department of Health under
12 standing orders by a licensed physician working for the department.

13 (b) Subject to the availability of funds, the department
14 shall furnish prophylaxis approved by the Texas Board of Health to
15 prevent ophthalmia neonatorum to each lay midwife registered under
16 this Act, subject to the restrictions of Subsection (c) of this
17 section.

18 (c) A lay midwife registered under this chapter may possess
19 and administer prophylaxis to prevent ophthalmia neonatorum only
20 under standing orders from a licensed physician as delineated in
21 Section 3.06 of the Medical Practice Act (Article 4495b, Vernon's
22 Texas Civil Statutes).

23 (d) The distribution or delivery of prophylaxis to prevent
24 ophthalmia neonatorum to a lay midwife registered under this Act by
25 any individual authorized by this Act is not subject to and does
26 not constitute a violation of Chapter 425, Acts of the 56th

1 Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas
2 Civil Statutes).

3 Sec. 22. ENFORCEMENT; CIVIL PENALTY. (a) The attorney
4 general or a district or county attorney may institute a civil
5 action to compel compliance with this Act.

6 (b) In addition to any injunctive relief or any other remedy
7 provided by law, if a person violates this Act or a rule adopted
8 under this Act, the department may assess a civil penalty against
9 that person as provided by this section.

10 (c) The department may assess the civil penalty in an amount
11 not to exceed \$500. In determining the amount of the penalty, the
12 department shall consider the seriousness of the violation.

13 (d) If, after examination of a possible violation and the
14 facts relating to that possible violation, the department concludes
15 that a violation has occurred, the department shall issue a
16 preliminary report that states the facts on which the conclusion is
17 based, the fact that a civil penalty is to be imposed, and the
18 amount to be assessed. Not later than the 10th day after the date
19 on which the department issues the preliminary report, the
20 department shall send a copy of the report to the person charged
21 with the violation, together with a statement of the right of the
22 person to a hearing relating to the alleged violation and the
23 amount of the penalty.

24 (e) Not later than the 20th day after the date on which the
25 report is sent, the person charged must either make a written
26 request for a hearing or remit the amount of the civil penalty to

1 the department. Failure either to request a hearing or to remit
2 the amount of the civil penalty within the time provided by this
3 subsection results in a waiver of a right to a hearing under this
4 Act. If the person charged requests a hearing, the hearing shall
5 be conducted in the manner provided by Section 14A of this Act. If
6 it is determined after hearing that the person has committed the
7 alleged violation, the department shall give written notice to the
8 person of the findings established by the hearing and the amount of
9 the penalty and shall enter an order requiring the person to pay
10 the penalty.

11 (f) Not later than the 30th day after the date on which the
12 notice is received, the person charged must pay the civil penalty
13 in full or, if the person wishes to contest either the amount of
14 the penalty or the fact of the violation, remit the assessed amount
15 to the department for deposit in an escrow account. If, after
16 judicial review, it is determined that no violation occurred or
17 that the amount of the penalty should be reduced, the department
18 shall remit the appropriate amount to the person charged with the
19 violation not later than the 30th day after the date on which the
20 judicial determination becomes final.

21 (g) Failure to remit the amount of the civil penalty to the
22 department within the time provided by Subsection (f) of this
23 section results in a waiver of all legal rights to contest the
24 violation or the amount of the penalty.

25 (h) A civil penalty owed under this section may be recovered
26 in a civil action brought by the attorney general at the request of

1 the department.

2 Sec. 23. PROVISION OF SUPPORT SERVICES. (a) The department
 3 and a local health department, a public health district, or a local
 4 health unit that is owned, operated, or leased by a political
 5 subdivision of this state shall provide medical and laboratory
 6 support services to pregnant women and newborns who are clients of
 7 lay midwives for the performance of the prenatal standard
 8 serological test for syphilis and the newborn screening tests
 9 required by law for phenylketonuria, hypothyroidism, and other
 10 inheritable diseases, if those services are available to other
 11 clients or patients of that entity. The entity may charge a
 12 reasonable fee for the services, but a person may not be denied
 13 services because of inability to pay.

14 (b) For the purposes of this section, "local health
 15 department," "public health district," and "local health unit" have
 16 the meanings assigned by the Local Public Health Reorganization Act
 17 (Article 4436b, Vernon's Texas Civil Statutes).

18 SECTION 14. Section 3.06, Medical Practice Act (Article
 19 4495b, Vernon's Texas Civil Statutes), is amended by adding
 20 Subsection (f) to read as follows:

21 (f)(1) It is the policy of this state that the prevention of
 22 ophthalmia neonatorum in newborn infants is of paramount importance
 23 for the protection of the health of Texas children.

24 (2) Authority to delegate medical acts to a lay midwife
 25 registered under Chapter 365, Acts of the 68th Legislature, Regular
 26 Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is

1 recognized as applicable to the possession of and administration of
2 eye prophylaxis for the prevention of ophthalmia neonatorum.

3 (3) A physician who has issued such a standing delegation
4 order is immune from liability in connection with acts performed
5 pursuant to the standing delegation order as long as a lay midwife
6 has provided proof of compliance with Chapter 365, Acts of the 68th
7 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
8 Civil Statutes) prior to the issuance of the order.

9 SECTION 15. Section 12, Chapter 365, Acts of the 68th
10 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
11 Civil Statutes), is repealed.

12 SECTION 16. (a) This Act takes effect September 1, 1987.

13 (b) A person is not required to be registered under this Act
14 until January 1, 1990.

15 (c) A person engaged in the practice of lay midwifery on the
16 effective date of this Act who has practiced for not less than two
17 years and who has complied with the identification requirements
18 imposed under Section 13, Chapter 365, Acts of the 68th
19 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
20 Civil Statutes), as those requirements existed on August 31, 1987,
21 is entitled to apply to take the lay midwifery training course
22 final examination prescribed by the Texas Board of Health without
23 completing an approved lay midwifery training course. The person
24 must pass the examination not later than December 31, 1989. If the
25 person does not pass the examination before January 1, 1990, the
26 person must complete an approved lay midwifery training course to

1 qualify for reexamination.

2 (d) A health care professional serving as a member of the
3 lay midwifery board on the effective date of this Act is entitled
4 to continue to serve until the expiration of that person's term.
5 On the expiration of the terms of health care professionals whose
6 terms expire January 31, 1989, and January 31, 1991, the Texas
7 Board of Health shall appoint lay midwives to fill the vacated
8 positions.

9 SECTION 17. The importance of this legislation and the
10 crowded condition of the calendars in both houses create an
11 emergency and an imperative public necessity that the
12 constitutional rule requiring bills to be read on three several
13 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE AMENDMENT NO. 1

Amend S.B. 780 as follows:

1. On page 2, line 9, strike "by rule" and between "shall" and "establish" insert "develop rules to".

2. On page 2, line 12, strike "adopted" and substitute "developed".

3. On page 5, line 9, strike "adopt rules" and insert "develop rules subject to adoption by the Texas Board of Health" between "shall" and "relating".

4. On page 6, line 18, strike "by rule" and between "shall" and "establish" insert "develop rules subject to adoption by the Texas Board of Health to".

5. On page 8, line 10, strike "promulgate rules" and between "shall" and "concerning" insert "develop rules subject to adoption by the Texas Board of Health".

Madla

COMMITTEE AMENDMENT NO. 2

Amend S.B. 780 on page 13 by adding Subsection (c) on line 18
to read as follows:

"(c) A physician who provides support services to pregnant women and newborns who are clients of registered lay midwives is immune from civil liability for any act or omission on the part of the midwife resulting in death, damage or injury if the physician provided the support services without remuneration or expectation of remuneration."

Wright

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 22, 1987

TO: Honorable Chet Brooks, Chairman
Committee on Health and Human Services
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 780
By: Uribe

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Bill No. 780 (relating to the regulation of lay midwives) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would authorize the Department of Health to require mandatory training and examination for lay midwives registered under this Act. The Department would be authorized to issue a certificate of registration to a lay midwife who meets the training and examination requirements and who pays a registration fee in an amount not to exceed \$25.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Revenue Gain to the General Revenue Fund</u>	<u>Probable Cost Out of the General Revenue Fund</u>	<u>Change in Number of State Employees from FY 1987</u>
1988	\$ 31,000	\$ 32,742	+1
1989	11,000	25,502	+1
1990	11,000	25,502	+1
1991	11,000	25,502	+1
1992	11,000	25,502	+1

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Department of Health;
LBB Staff: JO, HES, JWH, AMF, AF

HOUSE COMMITTEE REPORT

1987 MAY 27 AM 12:11

HOUSE OF REPRESENTATIVES

1st Printing

By: Uribe
(Madla)

S.B. No. 780

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of lay midwives; providing criminal and civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. LAY MIDWIFERY BOARD. The Texas Board of Health shall appoint a lay midwifery board composed of:

(1) six [~~three~~] lay midwives with at least five [~~three~~] years of experience in the practice of lay midwifery, no more than two [~~one~~] of whom may be [a] licensed health care professionals [~~professional~~];

(2) one certified nurse-midwife;

(3) a person licensed to practice medicine who is certified by the American College of Obstetricians and Gynecologists;

(4) one person licensed to practice medicine who is certified by the American Board of Pediatricians or the American Academy of Family Physicians; and

(5) three persons who are not practicing or trained in a health care profession and who represent the public interest.

SECTION 2. Subsection (a), Section 7, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The department shall hire an executive secretary after

1 consultation with the lay midwifery board to perform administrative
2 duties, including keeping the minutes of lay midwifery board
3 meetings, maintaining records about approved training courses, and
4 maintaining records of persons who are registered under [~~have~~
5 ~~received-a-letter-of-completion-as-described-in~~] this Act.

6 SECTION 3. Subsection (c), Section 8, Chapter 365, Acts of
7 the 68th Legislature, Regular Session, 1983 (Article 4512i,
8 Vernon's Texas Civil Statutes), is amended to read as follows:

9 (c) The lay midwifery board by rule [~~department~~] shall
10 establish a procedure for reporting and processing complaints
11 relating to lay midwifery practice in Texas. The Texas Board of
12 Health must approve the rules adopted under this subsection.

13 SECTION 4. Section 10, Chapter 365, Acts of the 68th
14 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
15 Civil Statutes), is amended by adding Subsections (d) and (e) to
16 read as follows:

17 (d) To be approved by the Texas Board of Health, a lay
18 midwifery training course must include training in:

19 (1) the use and administration of prophylaxis to prevent
20 ophthalmia neonatorum; and

21 (2) cardiopulmonary resuscitation of the type recommended by
22 the American Heart Association for certification by that
23 association in basic life support cardiopulmonary resuscitation for
24 adults and infants or any other type considered appropriate by the
25 board.

26 (e) The Texas Board of Health shall prescribe a standard

final examination for lay midwifery training courses.

SECTION 5. Subsection (a), Section 11, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person who has completed an approved lay midwifery training course or who has comparable training approved by the lay midwifery board is entitled to take the final examination prescribed by the Texas Board of Health ~~[of-the-training-course]~~.

SECTION 6. Section 13, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. REGISTRATION ~~[IDENTIFICATION]~~ REQUIREMENT. (a) A ~~[In--December--of--each--year,--a]~~ person may not practice ~~[who practices]~~ lay midwifery in this state unless the person is registered with the department. An applicant for registration must apply to the department on a form prescribed by the department. The application form must be accompanied by a nonrefundable application fee set by the department in an amount not to exceed \$25. The application form must include: ~~[shall--identify--himself as--a--lay-midwife-by-appearing-in-person-before-the-county-clerk-of-the-county-in-which-the-person-resides-or-before-the--county--clerk of--each--county--in--which--the-person-practices-lay-midwifery-and delivering-to-the-county-clerk-a-verified-identification-form--that contains:]~~

- (1) the person's name, residence, and post office address;
- (2) the person's date and place of birth;

1 (3) the location of the person's practice according to
2 counties; and

3 (4) other information the department determines necessary
4 ~~[for-the-identification-of-lay-midwives]~~.

5 (b) The applicant must also file with the application
6 documentation in the form required by the rules of the department
7 showing that the applicant has completed an approved lay midwifery
8 training course and passed the final examination prescribed by the
9 Texas Board of Health. ~~[The--identification--form---shall---be~~
10 ~~prescribed-by-the-department-]~~

11 (c) At the time of registration, the department ~~[The-county~~
12 ~~clerk]~~ shall provide each lay midwife ~~[who--identifies--himself]~~ a
13 written notice stating ~~[of]~~ a lay midwife's legal responsibilities
14 under the laws and rules of this state on a form prescribed by the
15 department. Failure to receive the notice does not constitute a
16 defense to prosecution for acts committed in violation of the laws
17 and rules of this state.

18 (d) The department shall provide each county clerk and each
19 local registrar of births within each county with the name of each
20 registered lay midwife who practices in that county ~~[county-clerk~~
21 ~~shall-retain--for--the--county--clerk's--records--a--copy--of--each~~
22 ~~identification--form---The--county--clerk--shall-send-the-original~~
23 ~~identification-form-to-the-department--The-county-clerk-may-charge~~
24 ~~a-reasonable-fee-for-these-services--under--Article--3930,--Revised~~
25 ~~Statutes]~~.

26 (e) The department shall issue a certificate of registration

1 to a lay midwife who meets the training and examination
 2 requirements of this section and pays the registration fee set by
 3 the department in an amount not to exceed \$25. A certificate of
 4 registration is issued for the calendar year expiring on December
 5 31. The department by rule may prorate the registration fee so
 6 that an initial registrant pays only that portion of the fee
 7 allocable to the number of whole or partial months remaining in the
 8 year after the month the certificate is issued.

9 (f) The lay midwifery board shall adopt rules relating to
 10 the renewal of a certificate of registration.

11 SECTION 7. Section 14, Chapter 365, Acts of the 68th
 12 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
 13 Civil Statutes), is amended to read as follows:

14 Sec. 14. ADDITIONAL INFORMATION. (a) The department may
 15 require information in addition to that required by Subsection (a)
 16 of Section 13 of this Act if it determines the additional
 17 information is necessary and appropriate to ascertain the nature
 18 and extent of lay midwifery in this state. The department may not
 19 require information regarding any act that is prohibited under this
 20 Act.

21 (b) Information received under this section may not be made
 22 public so as to disclose the identity of any person to whom the
 23 information relates. This information is not a public record as
 24 defined in Chapter 424, Acts of the 63rd Legislature, Regular
 25 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

26 (c) The department shall prescribe forms for the additional

1 information and shall distribute those forms to registered lay
 2 midwives. Each lay midwife must complete and return the forms to
 3 the department [~~the-county-clerks-of-this-state-~~

4 [~~(d)--When-a-person-identifies-himself-as-a-lay-midwife-under~~
 5 ~~Section-13-of-this-Act,-the-county-clerk-shall-give-a-copy--of--any~~
 6 ~~form--for--additional--information-to-the-person--The-person-shall~~
 7 ~~complete-the-form-and-return-it-with-the-identification-form-to-the~~
 8 ~~county-clerk-~~

9 [~~(e)--The--county--clerk--shall--send--these--forms--to---the~~
 10 ~~department]~~.

11 SECTION 8. Chapter 365, Acts of the 68th Legislature,
 12 Regular Session, 1983 (Article 4512i, Vernon's Texas Civil
 13 Statutes), is amended by adding Section 14A to read as follows:

14 Sec. 14A. SUSPENSION, REVOCATION, OR DENIAL OF CERTIFICATE.

15 (a) After a hearing, the lay midwifery board may suspend or revoke
 16 a certificate of registration or may deny the renewal of a
 17 certificate of registration of a lay midwife who practices in
 18 violation of this Act. The lay midwifery board by rule shall
 19 establish specific grounds for the suspension, revocation, or
 20 denial of a certificate.

21 (b) A hearing on the suspension, revocation, or denial of a
 22 certificate of registration is subject to the Administrative
 23 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
 24 Civil Statutes).

25 SECTION 9. Section 15, Chapter 365, Acts of the 68th
 26 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas

1 Civil Statutes), is amended to read as follows:

2 Sec. 15. ROSTER. (a) The department shall maintain a
3 roster of all persons registered [~~identified~~] to practice lay
4 midwifery.

5 (b) The roster shall contain for each person the information
6 required on the registration application [~~identification~~] form
7 under Subsection (a) of Section 13 of this Act and other
8 information that the department determines necessary to identify
9 with accuracy each lay midwife who is registered [~~identified~~] under
10 this Act. This information shall be a public record as defined in
11 Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973
12 (Article 6252-17a, Vernon's Texas Civil Statutes).

13 SECTION 10. Section 16, Chapter 365, Acts of the 68th
14 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
15 Civil Statutes), is amended by amending Subsection (b) and by
16 adding Subsection (h) to read as follows:

17 (b) The department with the advice of the lay midwifery
18 board shall prescribe the form of the written disclosure required
19 by this section, which shall include the information that a lay
20 midwife:

21 (1) may assist only in normal childbirth;

22 (2) has or does not have an arrangement with a local
23 physician for referring patients who have complications that occur
24 before or during childbirth; and

25 (3) may not:

26 (A) administer a prescription drug without a physician's

supervision, except for prophylaxis approved by the Texas Board of Health to prevent ophthalmia neonatorum;

(B) perform a Caesarean section; [7] or

(C) perform an episiotomy [7--and

[4)--has-or-has-not-passed-the-lay-midwife--training--course final-examination-approved-by-the-board].

(h) The disclosure form must include a statement explaining that state law requires every newborn child to be tested for certain inheritable diseases. The lay midwifery board shall promulgate rules concerning the referral of newborns to licensed practitioners for the performance of these tests.

SECTION 11. Section 17, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. PROHIBITED ACTS. (a) Except as provided by Section 21 of this Act, a [A] lay midwife may not:

(1) administer a prescription drug to a client except under the supervision of a licensed physician in accordance with the laws of this state;

(2) use forceps or surgical instruments for any procedure other than cutting the umbilical cord or providing emergency first aid during delivery;

(3) remove placenta by invasive techniques;

(4) advance or retard labor or delivery by using medicines or mechanical devices;

(5) ~~[use-in-connection-with-his-name-a--title7--abbreviation~~

1 or--any--designation--tending-to-imply-that-he-is-a-"registered"-or
2 "certified"-lay-midwife--as--opposed--to--one--who--has--identified
3 himself-in-compliance-with-this-Act,-or

4 [(6)] assist at childbirth other than a normal childbirth
5 except in an emergency situation that poses an immediate threat to
6 the life of the mother or newborn; or

7 (6) use in connection with his or her name a title,
8 abbreviation, or any designation other than "registered lay
9 midwife."

10 (b) A lay midwife may not advertise or otherwise represent
11 that the lay midwife is a medical doctor or a graduate of a medical
12 school unless the lay midwife is licensed to practice medicine by
13 the Texas State Board of Medical Examiners.

14 SECTION 12. Section 18, Chapter 365, Acts of the 68th
15 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
16 Civil Statutes), is amended to read as follows:

17 Sec. 18. PENALTIES. (a) A person [lay-midwife] commits an
18 offense if the person [lay-midwife] knowingly or intentionally acts
19 as a lay midwife without being registered under [commits--an--act
20 prohibited-by] this Act.

21 (b) An offense under Subsection (a) of this section is a
22 Class C misdemeanor.

23 (c) A lay midwife who knowingly or intentionally fails to
24 comply with the disclosure requirement of this Act commits a Class
25 C misdemeanor.

26 [(d)--A-lay-midwife-who-knowingly-or-intentionally--fails--to

~~comply--with--the--identification-requirement-of-this-Act-commits-a
Class-C-misdemeanor-]~~

SECTION 13. Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is amended by adding Sections 21, 22, and 23 to read as follows:

Sec. 21. PROPHYLACTIC TREATMENT OF NEWBORNS. (a) Each lay midwife shall administer prophylaxis approved by the Texas Board of Health to prevent ophthalmia neonatorum to each infant the lay midwife delivers under standing orders by a licensed physician or by any agent or employee of the Texas Department of Health under standing orders by a licensed physician working for the department.

(b) Subject to the availability of funds, the department shall furnish prophylaxis approved by the Texas Board of Health to prevent ophthalmia neonatorum to each lay midwife registered under this Act, subject to the restrictions of Subsection (c) of this section.

(c) A lay midwife registered under this chapter may possess and administer prophylaxis to prevent ophthalmia neonatorum only under standing orders from a licensed physician as delineated in Section 3.06 of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

(d) The distribution or delivery of prophylaxis to prevent ophthalmia neonatorum to a lay midwife registered under this Act by any individual authorized by this Act is not subject to and does not constitute a violation of Chapter 425, Acts of the 56th

1 Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas
2 Civil Statutes).

3 Sec. 22. ENFORCEMENT; CIVIL PENALTY. (a) The attorney
4 general or a district or county attorney may institute a civil
5 action to compel compliance with this Act.

6 (b) In addition to any injunctive relief or any other remedy
7 provided by law, if a person violates this Act or a rule adopted
8 under this Act, the department may assess a civil penalty against
9 that person as provided by this section.

10 (c) The department may assess the civil penalty in an amount
11 not to exceed \$500. In determining the amount of the penalty, the
12 department shall consider the seriousness of the violation.

13 (d) If, after examination of a possible violation and the
14 facts relating to that possible violation, the department concludes
15 that a violation has occurred, the department shall issue a
16 preliminary report that states the facts on which the conclusion is
17 based, the fact that a civil penalty is to be imposed, and the
18 amount to be assessed. Not later than the 10th day after the date
19 on which the department issues the preliminary report, the
20 department shall send a copy of the report to the person charged
21 with the violation, together with a statement of the right of the
22 person to a hearing relating to the alleged violation and the
23 amount of the penalty.

24 (e) Not later than the 20th day after the date on which the
25 report is sent, the person charged must either make a written
26 request for a hearing or remit the amount of the civil penalty to

1 the department. Failure either to request a hearing or to remit
2 the amount of the civil penalty within the time provided by this
3 subsection results in a waiver of a right to a hearing under this
4 Act. If the person charged requests a hearing, the hearing shall
5 be conducted in the manner provided by Section 14A of this Act. If
6 it is determined after hearing that the person has committed the
7 alleged violation, the department shall give written notice to the
8 person of the findings established by the hearing and the amount of
9 the penalty and shall enter an order requiring the person to pay
10 the penalty.

11 (f) Not later than the 30th day after the date on which the
12 notice is received, the person charged must pay the civil penalty
13 in full or, if the person wishes to contest either the amount of
14 the penalty or the fact of the violation, remit the assessed amount
15 to the department for deposit in an escrow account. If, after
16 judicial review, it is determined that no violation occurred or
17 that the amount of the penalty should be reduced, the department
18 shall remit the appropriate amount to the person charged with the
19 violation not later than the 30th day after the date on which the
20 judicial determination becomes final.

21 (g) Failure to remit the amount of the civil penalty to the
22 department within the time provided by Subsection (f) of this
23 section results in a waiver of all legal rights to contest the
24 violation or the amount of the penalty.

25 (h) A civil penalty owed under this section may be recovered
26 in a civil action brought by the attorney general at the request of

1 the department.

2 Sec. 23. PROVISION OF SUPPORT SERVICES. (a) The department
3 and a local health department, a public health district, or a local
4 health unit that is owned, operated, or leased by a political
5 subdivision of this state shall provide medical and laboratory
6 support services to pregnant women and newborns who are clients of
7 lay midwives for the performance of the prenatal standard
8 serological test for syphilis and the newborn screening tests
9 required by law for phenylketonuria, hypothyroidism, and other
10 inheritable diseases, if those services are available to other
11 clients or patients of that entity. The entity may charge a
12 reasonable fee for the services, but a person may not be denied
13 services because of inability to pay.

14 (b) For the purposes of this section, "local health
15 department," "public health district," and "local health unit" have
16 the meanings assigned by the Local Public Health Reorganization Act
17 (Article 4436b, Vernon's Texas Civil Statutes).

18 SECTION 14. Section 3.06, Medical Practice Act (Article
19 4495b, Vernon's Texas Civil Statutes), is amended by adding
20 Subsection (f) to read as follows:

21 (f)(1) It is the policy of this state that the prevention of
22 ophthalmia neonatorum in newborn infants is of paramount importance
23 for the protection of the health of Texas children.

24 (2) Authority to delegate medical acts to a lay midwife
25 registered under Chapter 365, Acts of the 68th Legislature, Regular
26 Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is

1 recognized as applicable to the possession of and administration of
2 eye prophylaxis for the prevention of ophthalmia neonatorum.

3 (3) A physician who has issued such a standing delegation
4 order is immune from liability in connection with acts performed
5 pursuant to the standing delegation order as long as a lay midwife
6 has provided proof of compliance with Chapter 365, Acts of the 68th
7 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
8 Civil Statutes) prior to the issuance of the order.

9 SECTION 15. Section 12, Chapter 365, Acts of the 68th
10 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
11 Civil Statutes), is repealed.

12 SECTION 16. (a) This Act takes effect September 1, 1987.

13 (b) A person is not required to be registered under this Act
14 until January 1, 1990.

15 (c) A person engaged in the practice of lay midwifery on the
16 effective date of this Act who has practiced for not less than two
17 years and who has complied with the identification requirements
18 imposed under Section 13, Chapter 365, Acts of the 68th
19 Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas
20 Civil Statutes), as those requirements existed on August 31, 1987,
21 is entitled to apply to take the lay midwifery training course
22 final examination prescribed by the Texas Board of Health without
23 completing an approved lay midwifery training course. The person
24 must pass the examination not later than December 31, 1989. If the
25 person does not pass the examination before January 1, 1990, the
26 person must complete an approved lay midwifery training course to

1 qualify for reexamination.

2 (d) A health care professional serving as a member of the
3 lay midwifery board on the effective date of this Act is entitled
4 to continue to serve until the expiration of that person's term.
5 On the expiration of the terms of health care professionals whose
6 terms expire January 31, 1989, and January 31, 1991, the Texas
7 Board of Health shall appoint lay midwives to fill the vacated
8 positions.

9 SECTION 17. The importance of this legislation and the
10 crowded condition of the calendars in both houses create an
11 emergency and an imperative public necessity that the
12 constitutional rule requiring bills to be read on three several
13 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE AMENDMENT NO. 1

Amend S.B. 780 as follows:

1. On page 2, line 9, strike "by rule" and between "shall" and "establish" insert "develop rules to".

2. On page 2, line 12, strike "adopted" and substitute "developed".

3. On page 5, line 9, strike "adopt rules" and insert "develop rules subject to adoption by the Texas Board of Health" between "shall" and "relating".

4. On page 6, line 18, strike "by rule" and between "shall" and "establish" insert "develop rules subject to adoption by the Texas Board of Health to".

5. On page 8, line 10, strike "promulgate rules" and between "shall" and "concerning" insert "develop rules subject to adoption by the Texas Board of Health".

Madla

COMMITTEE AMENDMENT NO. 2

Amend S.B. 780 on page 13 by adding Subsection (c) on line 18 to read as follows:

- "(c) A physician who provides support services to pregnant women and newborns who are clients of registered lay midwives is immune from civil liability for any act or omission on the part of the midwife resulting in death, damage or injury if the physician provided the support services without remuneration or expectation of remuneration."

Wright

S.B. No. 780

COMMITTEE AMENDMENT NO. 3

Amend S.B. 780 on page 5, line 3, by deleting the "\$25" and substituting "\$45".

Harris of Brazoria

COMMITTEE AMENDMENT NO. 4

Amend S.B. 780 on page 9, between lines 25 and 26, by inserting a new Subsection (d) to read as follows:

"(d) A lay midwife commits an offense if the lay midwife violates Section 17(b) of this Act. An offense under this subsection is a Class B Misdemeanor unless the actor has been convicted previously, in which event the offense is a Class A Misdemeanor."

Wright

COMMITTEE REPORT

The Honorable Gib Lewis
Speaker of the House of Representatives

5/25/87
(date)

Sir:

We, your COMMITTEE ON PUBLIC HEALTH,

to whom was referred SB 180 have had the same under consideration and beg to report
(measure)
back with the recommendation that it

- () do pass, without amendment.
(X) do pass, with amendment(s).
() do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (X) yes () no An actuarial analysis was requested. () yes (X) no

An author's fiscal statement was requested. () yes (X) no

~~The Committee recommends that this measure be placed on the (Local) or (Consent) Calendar.~~

This measure (X) proposes new law. (X) amends existing law.

House Sponsor of Senate Measure Madla

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wright, Ch.	X			
Clemons, V.C.	X			
Madla, C.B.O.	X			
Givens	X			
Harris, J.	X			
Heflin	X			
McDonald	X			
Rodriguez	X			
Schoolcraft	X			

Total
9 aye
0 nay
0 present, not voting
0 absent

Beryl Wright
CHAIRMAN
Laura Collier
COMMITTEE COORDINATOR

BILL ANALYSIS

BACKGROUND

Lay midwives are persons who assist childbirth for compensation. It is estimated that there are approximately 400 lay midwives in Texas. They are regulated by the Texas Lay Midwifery Law, Art. 4512i, V.T.C.S., enacted in 1983, which defines the duties, requirements, and prohibitions related to midwifery practice, including annual identification of midwives with their county clerk. The Act creates a lay midwifery board under the Texas Board of Health to establish requirements for an approved lay midwifery training course, establish qualifications for the lay midwifery training course instructors, issue a lay midwifery training manual, and establish eligibility requirements for taking the final examination. Lay midwives are not required to take the course or the examination to practice midwifery; they are required to annually identify themselves as midwives to the county clerk of the county in which they reside.

Under Sec. 3.02 of the Texas Venereal Disease Act (Art. 4445d, V.T.C.S.), physicians, nurses, midwives or other persons in attendance at a childbirth are required to use prophylaxis in order to prevent ophthalmia neonatorum. The Texas Lay Midwifery Law prohibits lay midwives from administering a prescription drug to a client except under the supervision of a licensed physician.

PURPOSE

This bill requires lay midwives to administer prophylaxis under standing orders from a physician, and requires the lay midwifery training course to include training in the use and administration of prophylaxis and cardiopulmonary resuscitation. The TDH would be authorized to distribute prophylaxis to lay midwives subject to the availability of funds. Lay midwives are required to show completion of an approved training course and passage of the final examination prescribed by the Board of Health.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sec. 3 of Art. 4512i, V.T.C.S.

Sec. 3. Expands the number of lay midwives on the Lay Midwifery Board from three to six, requiring at least five years experience instead of three, and allows no more than two instead of one to be licensed health care professionals; specifies that the person licensed to practice medicine can be certified by the American Academy of Family Physicians.

SECTION 2. Amends Subsec. (a), Sec. 7, Art. 4512i, V.T.C.S.

(a) Requires the executive secretary of the lay midwifery board to maintain records of persons registered under this Act.

SECTION 3. Amends Sec. 8(c) of Art. 4512i, V.T.C.S.

(c) Requires the lay midwifery board to establish by rule a procedure for reporting and processing complaints relating to practice, with approval of the Board of Health.

SECTION 4. Amends Sec. 10 of Art. 4512i, V.T.C.S., by adding subsecs. (d) and (e).

(d) Requires that in order for lay midwifery training courses to be approved, they must include training in the use and administration of prophylaxis and cardiopulmonary resuscitation.

(e) Requires the Board of Health to prescribe a standard final examination for the courses.

SECTION 5. Amends Subsec. (a), Sec. 11, Art. 4512i, V.T.C.S.

(a) Clarifies that the final examination is prescribed by the Board of Health.

SECTION 6. Amends Sec. 13 of Art. 4512i, V.T.C.S.

(a) Prohibits a person from practicing lay midwifery without registering with the TDH; specifies contents of application form accompanied by a fee not to exceed \$25; deletes current requirement of registering with the county clerk.

(b) Requires the applicant to file documentation as required by department rules showing completion of an approved training course and passage of the final examination.

(c) Requires the department to provide each lay midwife at the time of registration with a written notice stating legal responsibilities.

(d) Requires the department to provide each county clerk and local registrar of births within each county the name of each registered lay midwife who practices in that county.

(e) Requires the department to issue a certificate of registration to a lay midwife who meets the training and examination requirements and pays the registration fee; provides that certificates expire on December 31 of each year; authorizes the department to prorate the registration fee so that an initial registrant pays for that portion of the year remaining when the certificate is issued.

(f) Requires the lay midwifery board to adopt rules relating to the renewal of the certificate.

SECTION 7. Amends Sec. 14 of Art. 4512i, V.T.C.S.

Sec. 14. Requires the department to distribute prescribed forms for additional information to registered lay midwives; requires the midwife to return the forms to the department; deletes current language.

SECTION 8. Amends Art. 4512i, V.T.C.S., by adding Sec. 14A.

Sec. 14A(a). Authorizes the lay midwifery board to suspend or revoke a certificate or deny the renewal of a certificate after a hearing for a violation of the act; requires the board to establish by rule specific grounds for suspension, revocation, or denial of a certificate.

(b) Provides that hearings are subject to Art. 6252-13a, V.T.C.S.

SECTION 9. Amends Sec. 15 of Art. 4512i, V.T.C.S.

Sec. 15. Amends the requirement that the department maintain a roster to specify it to include all persons registered and requires the roster to contain information required on the application form under Sec. 13(a).

SECTION 10. Amends Sec. 16 of Art. 4512i, by amending subsec. (b) and adding subsec. (h).

(b) Requires the written disclosure form to include information that a lay midwife may administer prophylaxis approved by the Texas Board of Health.

(h) Requires the disclosure form to include a statement explaining that state law requires newborns to be tested for inheritable diseases; requires the lay midwifery board to promulgate rules concerning the referral of newborns to licensed practitioners for such tests.

SECTION 11. Amends Sec. 17 of Art. 4512i, V.T.C.S.

Sec. 17. (a) Provides an exception to prohibited acts as specified in Sec. 21; prohibits use of title other than "registered lay midwife".

(b) Prohibits advertisement or representation that the midwife is a doctor or medical school graduate unless licensed to practice medicine by the Board of Medical Examiners.

SECTION 12. Amends Sec. 18 of Art. 4512i, V.T.C.S.

Sec. 18. Provides an offense for knowingly or intentionally acting as a lay midwife without being registered under the Act.

SECTION 13. Amends Art. 4512i, V.T.C.S., by adding Secs. 21, 22, and 23.

Sec. 21(a) Requires a lay midwife to administer prophylaxis to each infant delivered under standing orders from a physician or by any agent or employee of the TDH under standing orders by a licensed physician working for the department.

(b) Requires the department to furnish prophylaxis subject to available funds and the restrictions of subsec. (c).

(c) Specifies that a registered lay midwife may possess and administer prophylaxis only under standing orders from a physician as delineated in Sec. 3.06 of the Medical Practice Act.

(d) Establishes that the distribution or delivery to a midwife by any individual authorized by this Act is not subject to and does not constitute a violation of Art. 4476-14, V.T.C.S.

Sec. 22. (a) Authorizes the attorney general or a district or county attorney to institute a civil action to compel compliance with the Act.

(b) Authorizes the department to assess a civil penalty against a person who violates the Act or adopted rule in addition to other legal remedy.

(c) Specifies the limit on the civil penalty of \$500; requires the department to consider the seriousness of the violation in determining the amount of penalty.

(d) Requires the department to issue a preliminary report following an examination of a possible violation; specifies what must be included; requires the department to send a copy to the person charged with a statement of the right to a hearing no later than 10 days after the preliminary report is issued.

(e) Requires the person charged to make a written request for a hearing or remit the amount of the civil penalty within 20 days after the report is sent or the right to a hearing is waived; requires a hearing to be conducted as provided in Sec. 14A; requires the department to give written notice including findings and amount of penalty with an order to pay the penalty.

(f) Requires the person to pay the civil penalty or if contesting the amount, remit the assessed amount for deposit in an escrow account no later than 30 days after the notice is received; requires the department to return the money to the person charged no later than 30 days after judicial determination becomes final if it is determined that no violation occurred or that the penalty should be reduced.

(g) Specifies that failure to remit the penalty within the time provided results in a waiver of all legal rights to contest the violation or amount of penalty.

(h) Permits a civil penalty owed under this section to be recovered in a civil action brought by the attorney general at the request of the department.

Sec. 23. (a) Requires the department and other health entities to provide medical and laboratory support services to pregnant women and newborns who are clients of lay midwives for the performance of serological tests for syphilis and newborn screening tests required by law for inheritable diseases if those services are available to other clients of that entity; permits the entity to charge a reasonable fee but prohibits denying services due to inability to pay.

(b) Provides that for the purpose of this section, "local health department", "public health district", and "local health unit" have meanings assigned by Art. 4436b, V.T.C.S.

SECTION 14. Amends Sec. 3.06 of Art. 4495b, V.T.C.S., by adding subsec. (f).

(f) States policy that prevention of ophthalmia neonatorum in newborns is of paramount importance; specifies that authority to delegate medical acts to a registered lay midwife is recognized as applicable to possession and administration of prophylaxis; provides immunity from liability for a physician who has issued standing orders provided a lay midwife has provided proof of compliance with Art. 4512i, V.T.C.S.

SECTION 15. Repeals Sec. 12 of Art. 4512i, V.T.C., regarding the department granting a letter of completion to a person passing the final examination for lay midwives.

SECTION 16. Effective date: September 1, 1987; specifies that a person is not required to be registered until January 1, 1990; outlines requirements for persons currently practicing; provides for continuation of terms for health care professionals currently serving on the lay midwifery board; provides for appointments to fill vacated positions.

SECTION 17. Emergency clause.

RULEMAKING AUTHORITY

The lay midwifery board is required to establish by rule a procedure for reporting and processing complaints relating to the practice of lay midwifery. The Board of Health must approve these rules. The lay midwifery board is required to adopt rules relating to the renewal of a certificate of registration, and to establish by rule specific grounds for the suspension, revocation, or denial of a certificate. The Department of Health is authorized to prorate by rule the registration fee so that initial registrants pay only the amount owed until December 31. The Texas Board of Health is required to prescribe a standard final examination for lay midwifery training courses.

SUMMARY OF COMMITTEE ACTION

Public notice was posted in accordance to the rules and a public hearing held on May 25, 1987. Testimony in support was received from Mr. Jose E. Camacho, Texas Association of Community Health Centers and Holly Scholles, Association of Texas Midwives. Committee amendment #1 was adopted which changes the rulemaking authority of the lay midwifery board to authorize the board to develop rules which must be approved or adopted by the Board of Health. Committee amendment #2 provides that a physician providing support services to clients of registered lay midwives without remuneration is immunity from civil liability for any act or omission on the part of the midwife. Committee amendment #3 was adopted which raises the maximum fee for a registration from \$25 to \$45. Committee amendment #4 was adopted which provides an offense for a violation of Sec. 17(b), advertising or representing that the midwife is a medical doctor or graduate of a medical school unless the midwife is licensed to practice medicine in Texas. The Committee then voted, by a vote of 9 ayes, 0 nays, to report S.B. 780 as amended to the House with the recommendation that it do pass.

544

HD

S. B. No.

780

By

Wrike

AN ACT relating to the regulation of lay midwives; providing criminal and civil penalties.

3/10
MAR 10 1987

Filed with the Secretary of the Senate

HEALTH AND HUMAN SERVICES

Read and referred to Committee on

Reported favorably

MAY 8 1987

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

MAY 15 1987

Senate and Constitutional Rules to permit consideration suspended by:

unanimous consent

____ years, ____ nays

MAY 15 1987

Read second time, _____, and ordered engrossed by:

a viva voce vote

____ years, ____ nays

Caption ordered amended to conform to the body of the bill.

MAY 15 1987

Senate and Constitutional 3 Day Rule suspended by a vote of 29 yeas, 1 nays.

MAY 15 1987

Read third time, _____, and passed by 30 yeas, 0 nays.

Betty King

SECRETARY OF THE SENATE

OTHER ACTION:

May 15, 1987

Engrossed

MAY 18 1987

Sent to House

Engrossing Clerk

Patsy Graw

MAY 18 1987

Received from the Senate

MAY 19 1987

Read first time and referred to Committee on

Public Health

5-25-87

Reported favorably amended, sent to Printer at 4:35pm

MAY 26 1987

MAY 27 1987

Printed and Distributed 12:11 pm

5-27-87

Sent to Committee on Calendars 8:11am

Read Second time (amended): passed to third reading (failed)

by (Non-Record Vote) Record Vote of ____ yeas, ____ nays ____ present not voting.

Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of ____ yeas, ____ nays ____ present not voting.

Read third time (amended); finally passed (failed) by a (Non-Record Vote) Record Vote of

____ yeas, ____ nays ____ present not voting.

Caption ordered amended to conform to body of bill.

Returned to Senate.

CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

Returned from House with ____ amendments.

Concurred in House amendments by a viva voce vote ____ yeas, ____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____, _____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman; _____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by: _____

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

1987 MAY 27 AM 12:11

HOUSE OF REPRESENTATIVES